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TITLE 16

PRACTICE, PROCEDURE, AND COURTS

(CHAPTERS 1-17 IN VOLUME 14A; CHAPTERS 55-89 IN
VOLUME 15; CHAPTERS 90-128 IN VOLUME 16)

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CHAPTER 18

CERTAIN INFERIOR COURTS

SECTION.

- 16-18-101 — 16-18-104. [Repealed.]
- 16-18-105. [Repealed.]
- 16-18-107 — 16-18-109. [Repealed.]

SECTION.

- 16-18-111. [Repealed.]
- 16-18-112. [Repealed.]

Effective Dates. Acts 2007, No. 663,
§ 56: Jan. 1, 2012.

16-18-101 — 16-18-104. [Repealed.]

Publisher's Notes. These sections, concerning the jurisdiction, compulsory attendance, rules, reports, and fees of certain inferior courts, were repealed by Acts 2003, No. 1185, § 169. The sections were derived from the following sources:

16-18-101. Acts 1995, No. 1245, § 1.
16-18-102. Acts 1995, No. 1245, § 2.
16-18-103. Acts 1995, No. 1245, § 3.
16-18-104. Acts 1995, No. 1245, § 4.

16-18-105. [Repealed.]

Publisher's Notes. This section, concerning fees of witnesses, was repealed by Acts 2003, No. 1185, § 171. The section

was derived from Acts 1995, No. 1245, § 5; 2003, No. 1185, § 170.

16-18-107 — 16-18-109. [Repealed.]

Publisher's Notes. These sections, concerning appeals, seals, elections, and terms in certain inferior courts, were repealed by Acts 2003, No. 1185, § 172. The sections were derived from the following sources:

16-18-107. Acts 1995, No. 1245, § 7.
16-18-108. Acts 1995, No. 1245, § 8.
16-18-109. Acts 1995, No. 1245, § 9.

16-18-111. [Repealed.]

Publisher's Notes. This section, concerning establishment of city court in lieu of municipal court in certain cities of the first class, was repealed by Acts 2003, No.

1185, § 173. The section was derived from Acts 1967, No. 98, § 1; A.S.A. 1947, § 22-811; Acts 1995, No. 175, § 1; 2001, No. 1645, § 1.

16-18-112. [Repealed.]

Publisher's Notes. Acts 1995, No. 1245 became law without the Governor's signature.

This section, concerning schedule of fees or monthly allowance for judge of city court, jurisdiction, and designation of sub-

stitute judge, was repealed by Acts 2007, No. 663, § 52. The section was derived from Acts 1969, No. 229, § 1; 1971, No. 48, § 1; A.S.A. 1947, § 22-812; Acts 1995, No. 175, § 2; 1995, No. 1245, § 10; 2003, No. 1185, § 174.

CHAPTER 19

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1. GENERAL PROVISIONS. [REPEALED.]
2. JUSTICES. [REPEALED.]

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

16-19-101 — 16-19-104. [Repealed.]

16-19-101 — 16-19-104. [Repealed.]

Publisher's Notes. This subchapter, concerning justice of the peace courts generally, was repealed by Acts 2003, No. 1185, § 175. This subchapter was derived from the following sources:

16-19-101. Rev. Stat., ch. 86, §§ 16-20; C. & M. Dig., §§ 1490-1494; Pope's Dig., §§ 1790-1794; A.S.A. 1947, §§ 26-701 — 26-705.

16-19-102. Acts 1873, No. 135, § 120, p.

430; C. & M. Dig., § 6502; Pope's Dig., § 8464; A.S.A. 1947, § 26-1201.

16-19-103. Acts 1875, No. 35, §§ 1, 2, p. 111; C. & M. Dig., §§ 6503, 6504; Pope's Dig., §§ 8465, 8466; A.S.A. 1947, §§ 26-1202, 26-1203.

16-19-104. Acts 1879 No. 70 §§ 1-3, p. 92; C. & M. Dig., §§ 6463-6465; Pope's Dig., §§ 8425 — 8427; A.S.A. 1947, §§ 26-1401 — 26-1403.

SUBCHAPTER 2 — JUSTICES

SECTION.

16-19-201 — 16-19-208. [Repealed.]

16-19-201 — 16-19-208. [Repealed.]

Publisher's Notes. This subchapter, concerning justices of the peace, was repealed by Acts 2003, No. 1185, § 175. This subchapter was derived from the following sources:

16-19-201. Rev. Stat., ch. 86, § 14; C. & M. Dig., § 2822; Pope's Dig., § 3540; A.S.A. 1947, § 26-121.

16-19-202. Acts 1873, No. 135, § 4, p. 430; C. & M. Dig., §§ 6408, 6409; Pope's Dig., §§ 8370, 8371; A.S.A. 1947, § 26-120.

16-19-203. Acts 1871, No. 64, §§ 1-3, p. 312; C. & M. Dig., §§ 6390 — 6392; Pope's Dig., §§ 8352 — 8354; A.S.A. 1947, §§ 26-108 — 26-110.

16-19-204. Acts 1843, §§ 2, 3, 5 — 9, p. 47; C. & M. Dig., § 6391; Pope's Dig., § 8353; A.S.A. 1947, §§ 26-111 — 26-113, 26-115 — 26-118.

16-19-205. Acts 1939, No. 182, §§ 1, 2; A.S.A. 1947, §§ 26-105, 26-106.

16-19-206. Rev. Stat., ch. 43, § 24; C. & M. Dig., §§ 2107, 6400; Pope's Dig., §§ 2711, 8362; A.S.A. 1947, § 22-113.

16-19-207. Acts 1868 (Adj. Sess.), No. 5, § 6, p. 6; C. & M. Dig., § 6394; Pope's Dig., § 8356; A.S.A. 1947, § 26-119.

16-19-208. Rev. Stat., ch. 86, § 23; C. & M. Dig., § 6396; Pope's Dig., § 8358; A.S.A. 1947, § 26-107.

SUBCHAPTER 3 — CONSTABLES

16-19-301. Peacekeeping duties and authority — Neglect of duty.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Article, If the Constable Blunders, Does the County

Pay?: Liability Under Title 42 U.S.C. § 1983, 28 U. Ark. Little Rock L. Rev. 519.

SUBCHAPTER 10 — EXECUTION, LEVY, AND SALE**16-19-1004. Issuance against goods and chattels — Real estate exempt.****CASE NOTES**

Cited: Smith v. Credit Serv. Co., 339 Ark. 41, 2 S.W.3d 69 (1999).

SUBCHAPTER 11 — APPEAL**16-19-1105. Trial on appeal.****CASE NOTES****Applicability.**

Although a driving while intoxicated (DWI) conviction is tried de novo in circuit court on appeal, the appeal does not affect the validity of the judgment of the district court until that judgment is overturned; thus, defendant's prior DWI conviction,

which was on appeal to the circuit court, was properly used to determine defendant's fourth-offense DWI status at sentencing in a subsequent case. Swint v. State, 356 Ark. 361, 152 S.W.3d 226 (2004).

**CHAPTER 20
CLERKS OF COURT****SUBCHAPTER.**

1. GENERAL PROVISIONS.
3. CIRCUIT CLERKS.
4. COUNTY AND PROBATE CLERKS.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

16-20-105. Circuit Clerks Continuing Education Board.
16-20-109. [Repealed.]

SECTION.

16-20-110. County Clerks Continuing Education Board.

16-20-105. Circuit Clerks Continuing Education Board.

(a) There is created the Circuit Clerks Continuing Education Board which shall be composed of the following seven (7) members:

- (1) Five (5) members of the Arkansas Circuit Clerks Association, designated by the Arkansas Circuit Clerks Association;
- (2) The Auditor of State or a person designated by him or her; and
- (3) One (1) member designated by the Association of Arkansas Counties.

(b)(1) It shall be the responsibility of the board to establish a continuing education program for the circuit clerks of the various counties in the state.

(2) The program shall be designed to better equip persons elected to serve as circuit clerks to carry out their official responsibilities in an effective and efficient manner. The program shall include requirements and procedures for an effective certification program for circuit clerks.

(c) It shall also be the responsibility of the board to disburse any funds made available to it from the Circuit Clerks Continuing Education Fund and to establish and maintain a continuing education program and a certification program for circuit clerks.

History. Acts 1983, No. 914, §§ 1, 2; A.S.A. 1947, §§ 23-421, 23-422; Acts 1995, No. 986, § 1; 2009, No. 480, § 1.

Amendments. The 2009 amendment deleted "County and" preceding "Circuit Clerks" and "county clerks and" preceding "circuit clerks" throughout the section; in

(a), substituted "seven (7)" for "nine (9)" in the introductory language, substituted "Five (5)" for "Three (3)" and "Circuit" for "County" twice in (a)(1), deleted (a)(2) and (a)(3), and redesignated the remaining subdivisions accordingly; and made minor stylistic changes.

16-20-109. [Repealed.]

Publisher's Notes. This section, concerning facsimile copies transmitted as pleadings, was repealed by Acts 2003, No.

1185, § 176. The section was derived from Acts 1989, No. 58, § 1; 1989 (3rd Ex. Sess.), No. 19, § 1; 1997, No. 874, § 1.

16-20-110. County Clerks Continuing Education Board.

(a) There is created the County Clerks Continuing Education Board which shall be composed of the following seven (7) members:

(1) Five (5) members of the Arkansas Association of County Clerks, designated by the Arkansas Association of County Clerks;

(2) The Auditor of State or a person designated by him or her; and

(3) One (1) member designated by the Association of Arkansas Counties.

(b)(1) It shall be the responsibility of the board to establish a continuing education program for the county clerks of the various counties in the state.

(2) The program shall be designed to better equip persons elected to serve as county clerks to carry out their official responsibilities in an effective and efficient manner. The program shall include requirements and procedures for an effective certification program for county clerks.

(c) It shall also be the responsibility of the board to disburse any funds made available to it from the County Clerks Continuing Education Fund and to establish and maintain a continuing education program and a certification program for county clerks.

History. Acts 2009, No. 480, § 2.

SUBCHAPTER 3 — CIRCUIT CLERKS

SECTION.

16-20-301. Preservation of seal and property of office.

SECTION.

16-20-306. [Repealed.]

16-20-301. Preservation of seal and property of office.

(a) Each clerk shall preserve the seal and other property belonging to his or her office and shall provide suitable books, stationery, furniture, and other things necessary for his or her office.

(b) The seal shall be clear and legible and capable of photographic reproduction.

History. Rev. Stat., ch. 25, § 8; C. & M. Dig., § 1371; Pope's Dig., § 1632; A.S.A. 1947, § 23-307; Acts 2013, No. 469, § 2.

Amendments. The 2013 amendment

deleted "Office supplies and equipment" in the section heading; and rewrote the section.

16-20-306. [Repealed.]

Publisher's Notes. This section, concerning masters or commissioners, was repealed by Acts 2003, No. 1185, § 177. The section was derived from Acts 1873,

No. 53, § 7, p. 113; C. & M. Dig., §§ 1364, 1365; Pope's Dig., §§ 1625, 1626; A.S.A. 1947, § 23-314.

SUBCHAPTER 4 — COUNTY AND PROBATE CLERKS

SECTION.

16-20-401. Duties of clerk generally.

16-20-404. Fee for making settlement with collector.

16-20-407. Additional marriage license fee.

SECTION.

16-20-408. Fee for filing a district report or affidavit.

16-20-401. Duties of clerk generally.

(a) The county clerk shall, by virtue of his or her office, be clerk of the county court for his or her county.

(b) It shall be his or her duty to attend each regular or special session of the court, either in person or by deputy, and to keep and preserve in his or her office a complete and correct record of the proceedings of the court.

(c) When a report filed under § 14-86-103 or an affidavit of a district resident containing substantially the same information required under § 14-86-103(c) and filed with the county clerk indicates a vacancy in a district board or district commission, the county clerk shall provide a written notice of the vacancy to:

- (1) The members of the district board or the district commission; and
- (2) The county court.

(d) When a report filed under § 14-86-103 or an affidavit of a district resident containing substantially the same information required under § 14-86-103(c) and filed with the county clerk indicates a vacancy in a

district board or a district commission has not been filled in the interval after the county clerk gave the notices required under subsection (c) of this section, the county clerk shall provide a written notice of the continuing vacancy to:

- (1) The members of the district board or the district commission;
- (2) The county court; and
- (3) Any prosecuting attorney whose judicial district has jurisdiction over the district board or the district commission.

History. Acts 1873, No. 31, § 5, p. 53; C. & M. Dig., § 1392; Pope's Dig., § 1653; A.S.A. 1947, § 23-405; Acts 2009, No. 386, § 2.

Amendments. The 2009 amendment added (c) and (d).

16-20-404. Fee for making settlement with collector.

The clerks of the county courts and of the probate division of the circuit courts are authorized to charge a fee of not more than ten dollars (\$10.00) per day for making settlement with the collector for each day employed, including quarterly apportionments, but not exceeding thirty (30) days during any calendar year.

History. Acts 1963, No. 491, § 1; A.S.A. 1947, § 23-420; Acts 2003, No. 1185, § 178.

16-20-407. Additional marriage license fee.

(a) Each county clerk in this state shall charge an additional fee of thirteen dollars (\$13.00) for each marriage license issued.

(b)(1) The clerk shall deposit two dollars (\$2.00) of the moneys collected under this section into the county treasury to the credit of the county clerk's cost fund as special revenue as provided under § 21-6-413(e)(2) and shall be appropriated and expended exclusively for the operation of the office of county clerk.

(2) The clerk shall transmit eleven dollars (\$11.00) of the moneys collected under this section to the Treasurer of State who shall deposit it in the Domestic Peace Fund as special revenue.

History. Acts 2003, No. 1029, § 1; 2007, No. 745, § 1.

Cross References. Domestic Peace Fund, § 19-6-491.

16-20-408. Fee for filing a district report or affidavit.

The fee for filing a report or an affidavit under § 14-86-103 shall be the same as the fee for initiating a cause of action under § 21-6-415.

History. Acts 2009, No. 386, § 3.

Cross References. County court clerks -- Uniform filing fees, § 21-6-415.

CHAPTER 21

PROSECUTING ATTORNEYS

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1. GENERAL PROVISIONS.
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11. SIXTH JUDICIAL DISTRICT.
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22. SEVENTEENTH JUDICIAL DISTRICT.
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SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 16-21-106. Assistance to victims and witnesses of crimes — Victim of crimes case coordinator.
- 16-21-108. Child support enforcement — Participation in federal programs — Collection and assessment of costs.
- 16-21-115. City attorneys.
- 16-21-121. First Judicial District Prosecuting Attorney.
- 16-21-127. The Seventh Judicial District — The Twenty-second Judicial District.
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- 16-21-129. The Ninth Judicial District-East.
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- 16-21-132. The Eleventh Judicial District-East.
- 16-21-135. The Thirteenth Judicial District.
- 16-21-136. The Fourteenth Judicial District.
- 16-21-137. The Fifteenth Judicial District.
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- 16-21-140. The Twenty-third Judicial District.
- 16-21-147. Powers of deputy prosecuting attorney — Disposition of federal forfeiture funds.
- 16-21-159. Duty after receiving notice of vacancy on district board.

Effective Dates. Acts 2001, No. 203, § 2: Feb. 9, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the Fifteenth Judicial District would operate more effectively with a Class B prosecutor in that it is no longer necessary for the Prosecuting Attorney to continue as a full time prosecutor. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If

the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 67, § 2: Feb. 5, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Fourteenth Judicial District will operate more effectively and efficiently with a Class B prosecutor and that it is urgent that this change be given effect at the earliest date practical. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is

neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 765, § 2: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is a sufficient current caseload and significant backlog of cases in the Northern District and Southern District of the Eleventh Judicial District-East to justify the prosecutor being fulltime. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2005, No. 872, § 2: Mar. 15, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the workload of the Ninth Judicial District-East is burdensome; that the prosecuting attorney for the Ninth Judicial District-East should be employed on a full-time basis; that this act is indispensable to ensure the efficient administration of justice in the Ninth Judicial District-East. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 85, § 2: Feb. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is sufficient current caseload and a significant backlog of cases in the Thirteenth Judicial District to justify the change to a Division A Judicial District with a full-time prosecuting attorney’s position. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 459, § 2: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is sufficient current caseload and a significant backlog of cases in the Fifteenth Judicial District to justify the change to a Division A Judicial District with a full time prosecuting attorney’s position. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2011, No. 220, § 3: Mar. 1, 2011. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the workload of the Eighth Judicial District-North is burdensome and the prosecuting attorney for the Eighth Judicial District-North should be employed on a full-time basis; that the workload of the Ninth Judicial District-West does not justify Division A status; and that this act is immediately necessary in order to ensure the efficient administration of justice in the Eighth Judicial District-North. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on March 1, 2011.”

Acts 2013, No. 539, § 5: Mar. 28, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that a prosecuting attorney and his or her deputy prosecuting attorneys perform a vital public function and often are in dangerous situations due to the nature of the crimes they prosecute; and that this act is immediately necessary because allowing a prosecuting attorney and his or her deputy prosecuting attorneys to carry a firearm or concealed handgun is essential to the safe operation of criminal justice in this state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or and the veto is overridden, the date the last house overrides the veto.”

(3) If the bill is vetoed by the Governor

16-21-106. Assistance to victims and witnesses of crimes — Victim of crimes case coordinator.

(a)(1) The prosecuting attorneys shall, upon request, provide to a victim and the immediate family members of all homicide victims, whether or not they are witnesses in criminal proceedings, notice of critical events in the criminal justice process, which shall include, but not be limited to:

(A) Notice of motions or hearings to establish or reduce bail or authorize other pretrial release from custody;

(B) Notice of proceedings in which any plea agreement may be submitted;

(C) Notice of trial;

(D) Notice of any motion that may substantially delay the prosecution;

(E) Notice that a court proceeding for which the victim has been subpoenaed will not transpire as scheduled;

(F) Notice of the date, time, and place of the defendant's appearance before a judicial officer;

(G) The function of a presentence report, the name, street address, and telephone number of the agency preparing the report, and the defendant's right of access to the report;

(H) Notice of the victim's right under this act to present a victim impact statement and the defendant's right to be present at the sentencing proceeding;

(I) Notice of the date, time, and place of any sentencing proceeding;

(J) Notice of the date, time, and place of any hearing for reconsideration of a sentence imposed;

(K) Notice of any sentence imposed and any modification of that sentence; and

(L) Notice of the right to receive information from the Department of Correction, Arkansas State Hospital, and any other facility to which the defendant is committed by the court.

(2) After a prosecution is commenced, the prosecuting attorney shall promptly inform a victim of:

(A) Relevant criminal justice procedures;

(B) The crime with which the defendant has been charged, including an explanation of the elements of the crime, if necessary to an understanding of the nature of the crime; and

(C) The file number of the case and the prosecuting attorney's name, office address, and telephone number.

(3)(A) The notice may be accomplished by providing the victim or immediate family member with a telephone number to a computer notification program.

(B) Prosecutors remain responsible for providing the notice in instances where no computer notification program exists.

(4) When an immediate family member has been charged with the homicide, that person shall not be notified in accordance with this section.

(b)(1) Prosecuting attorneys shall confer with the victim before amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion.

(2) Failure of the prosecuting attorney to confer with the victim does not affect the validity of an agreement between the prosecuting attorney and the defendant or of an amendment, dismissal, plea, pretrial diversion, or other disposition.

(c)(1) The prosecuting attorney of the county from which the inmate was committed shall notify the Parole Board at the time of commitment of the desire of the victim or member of the victim's family to be notified of any future parole or clemency hearings, and to forward to the board the last known address and telephone number of the victim or member of the victim's family.

(2) It shall be the responsibility of the victim or the victim's next of kin to notify the board after the date of commitment of any change in regard to the desire to be notified of any future parole or clemency hearings.

(d) The prosecuting attorneys and deputy prosecuting attorneys shall provide the following services to victims of crimes and witnesses of crimes and the family members of all homicide victims, whether or not they are witnesses in criminal proceedings:

(1) Assisting the persons in obtaining protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;

(2) Assisting the persons in applying for financial assistance and other social services available as a result of being a witness or victim of a crime;

(3) Assisting the persons in applying for any witness fees to which they are entitled;

(4) Providing, when possible, a secure waiting area during court proceedings that does not require the persons to be in close proximity to the defendants and families and friends of the defendants and otherwise make a reasonable effort to minimize unwanted contact between the victim, members of the victim's family, or prosecution witnesses and the defendant, members of the defendant's family, or defense witnesses before, during, and immediately after a judicial proceeding; and

(5) Interceding with the persons' employers to assure that the employers cooperate with the criminal justice process in order to minimize loss of pay and other benefits resulting from court appearances.

(e) In order to enable the prosecuting attorney to perform the additional duties provided in this section:

(1) The prosecutor may request the county judge of the county to designate or provide an appropriate room or area in the county

courthouse, reasonably close to the courtroom, to serve as a waiting area during court proceedings to accommodate the families and friends of the defendants, as provided in subsection (d) of this section; and

(2) The prosecutor may request the quorum court of the county to provide additional employees for his or her office to be known as victim of crimes case coordinators at such salary as may be determined by the quorum court, to be in addition to any other position available to the prosecutor's office.

History. Acts 1983, No. 526, §§ 1, 2; 1995 (1st Ex. Sess.), No. 13, § 4; 1997, No. 1985, No. 450, §§ 1, 2; A.S.A. 1947, §§ 24-736, § 1; 1997, No. 1262, § 16; 1999, No. 141, 24-142; Acts 1991, No. 904, §§ 14, 20; 1508, § 7; 2005, No. 1975, § 2. 1991, No. 1124, § 1; 1995, No. 1256, § 20;

16-21-108. Child support enforcement — Participation in federal programs — Collection and assessment of costs.

(a) The prosecuting attorneys of the several judicial districts in the State of Arkansas shall be designated as local units of government for the express purpose of permitting contracting with the Department of Finance and Administration for the provision of legal services under Part D of Title IV of the Social Security Act of 1935, as delegated to the states in 1975.

(b) All collections resulting from such a program shall be placed in a special account for each county, namely a child support enforcement account, and distributed in keeping with the requirements of Pub. L. No. 93-647 and rules and regulations promulgated by the department.

(c)(1) In all cases when any circuit court shall levy a fine or forfeiture as a result of an appearance by the prosecutor or his or her deputy, the fine or forfeiture shall be deposited directly with the county treasurer, who shall enter the exact amount into a separate account and deposit the funds into the prosecuting attorney's fund.

(2) The county treasurer of those counties composing the Sixth Judicial District shall account for the prosecuting attorney's fund on a separate ledger sheet and shall provide a monthly statement to the prosecuting attorney of the district, itemizing the total by amount of fines, fees, forfeitures, and costs assessed for the month.

(d)(1) In each case in which the prosecuting attorney shall make an appearance and the defendant is judged guilty, the court shall assess the defendant costs, which shall be paid directly to the prosecuting attorney's fund.

(2) The prosecuting attorney shall enforce the provisions of this section by action to compel assessment of costs, where necessary.

(e)(1) The Prosecuting Attorney of the Sixth Judicial District shall submit a proposed budget to the quorum courts of the counties composing the Sixth Judicial District for their advice and counsel.

(2) The quorum court shall then make advisory recommendations to both houses of the General Assembly concerning the prosecuting attorney's proposed budget.

History. Acts 1977, No. 565, §§ 1-5; A.S.A. 1947, §§ 24-130 — 24-134; Acts 2005, No. 1994, § 262.

16-21-115. City attorneys.

A prosecuting attorney may designate the duly elected or appointed city attorney of any municipality within the prosecutor's district to prosecute in the name of the state in the district and city courts violations of state misdemeanor laws, which violations occurred within the limits of the municipality, if the city attorney agrees to the appointment.

History. Acts 1979, No. 662, § 1; A.S.A. 1947, § 24-122.1; Acts 2003, No. 1185, §§ 179, 180.

16-21-121. First Judicial District Prosecuting Attorney.

The First Judicial District shall be a Division A Judicial District.

History. Acts 1993, No. 995, § 1; Acts 2005, No. 1177, § 1.

16-21-127. The Seventh Judicial District — The Twenty-second Judicial District.

(a) The Seventh Judicial District shall be a Division A Judicial District.

(b) The Twenty-second Judicial District shall be a Division A Judicial District.

History. Acts 1997, No. 827, § 7.

A.C.R.C. Notes. As enacted in 1997, this section provided: "(a) Effective January 1, 1999, the Seventh Judicial District-North shall be a Division A Judicial District.

"(b) Effective January 1, 1999, the Seventh Judicial District-South shall be a Division A Judicial District."

Under Acts 1999, No. 7, codified as § 16-13-3101 et seq., the Seventh Judicial

District-South became the Seventh Judicial District and the Seventh Judicial District-North became the Twenty-Second Judicial District.

Publisher's Notes. Former § 16-21-127, concerning the Seventh Judicial District, was repealed by Acts 1997, No. 827, § 9. The section was derived from Acts 1993, No. 1305, § 1.

This section was inadvertently omitted from the bound volume.

16-21-128. The Eighth Judicial District.

(a) The Eighth Judicial District-North shall be a Division A Judicial District.

(b) Effective January 1, 1999, the Eighth Judicial District-South shall be a Division A Judicial District.

History. Acts 1993, No. 1306, § 1; 1997, No. 1270, § 5; 1999, No. 35, § 1; 2011, No. 220, § 1.

Amendments. The 2011 amendment substituted "Division A" for "Division B" in (a).

16-21-129. The Ninth Judicial District-East.

The Ninth Judicial District-East shall be a Division B Judicial District.

History. Acts 1993, No. 1306, § 1; 2005, No. 872, § 1; 2007, No. 494, § 1. **Amendments.** The 2007 amendment substituted “Division B” for “Division A.”

16-21-130. The Ninth Judicial District-West.

The Ninth Judicial District-West shall be a Division B Judicial District.

History. Acts 1993, No. 1306, § 1; 1994 (2nd Ex. Sess.), No. 17, § 1; 1994 (2nd Ex. Sess.), No. 18, § 1; 2011, No. 220, § 2. **Amendments.** The 2011 amendment substituted “Division B” for “Division A.”

16-21-132. The Eleventh Judicial District-East.

The Eleventh Judicial District-East shall be a Division A Judicial District.

History. Acts 1993, No. 1306, § 1; 2003, No. 765, § 1.

16-21-135. The Thirteenth Judicial District.

The Thirteenth Judicial District shall be a Division A Judicial District.

History. Acts 1993, No. 1306, § 1; 2009, No. 85, § 1. **Amendments.** The 2009 amendment substituted “Division A” for “Division B.”

16-21-136. The Fourteenth Judicial District.

The Fourteenth Judicial District shall be a Division B Judicial District.

History. Acts 1993, No. 1306, § 1; 2003, No. 67, § 1.

16-21-137. The Fifteenth Judicial District.

The Fifteenth Judicial District shall be a Division A Judicial District.

History. Acts 1993, No. 1306, § 1; 1997, No. 322, § 1; 2001, No. 203, § 1; 2009, No. 459, § 1. **Amendments.** The 2009 amendment substituted “Division A” for “Division B.”

16-21-138. The Sixteenth Judicial District.

The Sixteenth Judicial District shall be a Division A Judicial District.

History. Acts 1993, No. 1306, § 1; the 2001 amendment is retroactive to 2001, No. 249, § 1. January 1, 2001.

Publisher's Notes. By its own terms,

16-21-140. The Twenty-third Judicial District.

The Twenty-third Judicial District shall be a Division A Judicial District.

History. Acts 1993, No. 1306, § 1; 1999, No. 456, § 6; 2001, No. 199, § 1.

16-21-147. Powers of deputy prosecuting attorney — Disposition of federal forfeiture funds.

(a) A deputy prosecuting attorney who is duly appointed in any county of a judicial district shall, with the prosecuting attorney's consent, have the authority to perform all official acts as a deputy prosecuting attorney in all counties within the district.

(b)(1) A prosecuting attorney and those deputy prosecuting attorneys and other staff members he or she designates shall be considered law enforcement officers for the purposes of utilizing emergency, protective, and communication equipment in coordination with interagency cooperative investigations and operations.

(2) However, the prosecuting attorney and all members of his or her office shall have no greater arrest powers than those accorded all citizens under the Arkansas Constitution and the Arkansas Code.

(3) A prosecuting attorney and those deputy prosecuting attorneys designated by the prosecuting attorney may carry firearms.

(4) A prosecuting attorney who elects to carry a firearm or authorize his or her deputy prosecuting attorneys to carry a firearm shall adopt a weapons policy and a use of force policy.

(c) A prosecuting attorney shall have the power to appoint deputy prosecuting attorneys and other employees at such salaries as are authorized in the grant awards from the Department of Finance and Administration's Drug Law Enforcement Program, Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, as amended, or its successor.

(d) All federal forfeitures to a prosecuting attorney's office shall be deposited in a separate account pursuant to § 5-64-505(i)(4).

History. Acts 1993, No. 1306, § 4; 1999, No. 1120, § 7; 2013, No. 539, § 4.

Amendments. The 2013 amendment substituted "he or she" for "he" in (b)(1); in (b)(2), substituted "However" for "Provided that" and "his or her" for "his"; and added (b)(3) and (b)(4).

16-21-153. License — Confirmation — Vacancies.

A.C.R.C. Notes. Acts 1999, No. 1044, § 8, provided: "LEAVE BENEFITS. Deputy prosecuting attorneys who convert from county or grant funded employment to state employment and are employed prior to July 1, 1999, shall have

their length of service with the county recognized for purposes of accrual rates for sick leave and annual leave.”

16-21-159. Duty after receiving notice of vacancy on district board.

A prosecuting attorney who receives notice under § 16-20-401(d) of a continuing vacancy on a board or commission of a levee, drainage, irrigation, watershed, or river improvement district shall investigate the alleged vacancy and take the appropriate action to fill any existing vacancy.

History. Acts 2009, No. 386, § 4.

SUBCHAPTER 2 — PROSECUTOR COORDINATOR ACT

SECTION.

16-21-203. Prosecution
Commission.

SECTION.

16-21-207. [Repealed.]

16-21-203. Prosecution Coordination Commission.

(a)(1) There is created a Prosecution Coordination Commission which shall be composed of seven (7) prosecuting attorneys elected by the prosecuting attorneys of the various judicial districts of this state from among their own members.

(2) The Prosecution Coordination Commission shall be elected by the prosecuting attorneys according to rules adopted by them for a term of one (1) year which shall run from January 1 through December 31 of each year.

(b) The commission members shall select from among their members a chairman, and they shall establish rules and procedures for the effective performance of their duties and responsibilities as set forth in this subchapter.

(c) The commission shall have the following duties and responsibilities:

(1) Accept and evaluate applications for the position of Prosecutor Coordinator and, by a majority vote of its members, appoint from among the applicants considered a Prosecutor Coordinator who shall serve in such capacity at the pleasure of the commission. However, any person serving in the capacity of Prosecutor Coordinator at any of the various times that the commission is elected pursuant to this section may continue to so serve, at the pleasure of the newly elected commission, without further consideration of other applicants;

(2) Advise the Prosecutor Coordinator as to the immediate needs and priorities of the prosecution function throughout the state;

(3) Establish the various duties and responsibilities of the Prosecutor Coordinator beyond those set forth in this subchapter;

(4) Develop long-range educational services and other support programs for the various prosecuting attorneys of this state;

(5) Serve as an advisory committee to the Prosecutor Coordinator for the production and supplementation of an office and trial manual and standardized criminal litigation forms; and

(6) Render assistance and advice in the investigation of organized crime as requested by any organized crime prevention council which may be created on a statewide basis.

History. Acts 1975, No. 925, § 2; A.S.A. 1947, § 24-127.

A.C.R.C. Notes. Acts 2013, No. 1367, § 4, provided: "LEGISLATIVE INTENT. It is the intent of the General Assembly, in the transition to a state-funded deputy prosecuting attorney system, to provide an appropriate and adequate level of legal representation through deputy prosecuting attorneys in all areas of the state. It is recognized by the General Assembly that in many areas of the state, resources have not been available to support deputy prosecuting attorney salaries at the necessary

level. With the transition of local funding of deputy prosecuting attorney salaries to state funding, it is not the intent of the General Assembly to adversely affect those districts whose system has been working well or to implement a system which is too inflexible to respond to the needs of each judicial district. Therefore, the Prosecution Coordination Commission is charged with the responsibility of assisting in the maintenance of a system which equitably serves all areas of the state by providing quality deputy prosecuting attorneys."

16-21-207. [Repealed.]

Publisher's Notes. This section, concerning peer review of certain prosecution and law enforcement grant applications,

was repealed by Acts 2001, No. 1786, § 2. The section was derived from Acts 1995, No. 1221, § 3.

SUBCHAPTER 8 — THIRD JUDICIAL DISTRICT

SECTION.

16-21-801. Contingent expense allowance.

Effective Dates. Acts 2005, No. 458, § 3: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act is essential to the operation of the criminal justice system in the Third Judicial District; that this act will provide needed personnel to the prosecuting attorney of the Third Judicial District; and that this act is immediately necessary because the additional personnel are critical to the effort to combat crime in the

Third Judicial District. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-21-801. Contingent expense allowance.

(a) The office of the Prosecuting Attorney of the Third Judicial District shall receive not less than a contingent expense reimbursement

for the expenses of his or her office, including, but not limited to, telephone, telegraph, postage, printing, office supplies and equipment, office rent, stationery, traveling expense, special service, operation of automobiles, and such other expense which, within the discretion of the prosecuting attorney, may be a proper expense of the office, and also including necessary expenses in connection with any proper investigation incident to any criminal law violation or trials before any grand jury or any court within the judicial district coming within the duties of his or her office.

(b) The expenses provided for in subsection (a) of this section shall be borne by the counties constituting the Third Judicial District as follows:

- (1) Jackson \$6,250 per year;
- (2) Lawrence \$6,250 per year;
- (3) Randolph \$6,250 per year; and
- (4) Sharp \$6,250 per year.

(c)(1) The expenses provided for shall be paid in equal quarterly installments from each county general fund, and the checks shall be made payable to the office of the Prosecuting Attorney of the Third Judicial District.

(2) Disbursements shall be made by the prosecuting attorney for the necessary expenses of the office based upon adequate documentation.

(d)(1) Each deputy prosecuting attorney of the Third Judicial District shall receive a reimbursement for the expenses of his or her office, including, but not limited to, maintenance and operation, capital outlay, office supplies, telephone, postage, copying, insurance, and library.

(2)(A) Disbursements shall be made for the necessary expenses of the office based upon adequate documentation and upon appropriation of the respective county's quorum court and approval of each respective county judge.

(B) The prosecuting attorney or deputies may also be allowed additional expenses upon appropriation of the quorum court and approval of each respective county judge.

(e) The Prosecuting Attorney of the Third Judicial District shall be entitled to the following assistants and employees:

(1)(A)(i) One (1) administrative assistant, whose salary shall not be less than twenty-four thousand five hundred dollars (\$24,500) per annum.

(ii) The salary is to be paid in accordance with the pay periods and payroll policy of Jackson County.

(B)(i) In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Jackson County.

(ii) The counties of Lawrence, Randolph, and Sharp each shall reimburse Jackson County for a pro rata share of the salary, social security, matching retirement, insurance, and all related salary expenses paid for the position in subdivision (e)(1)(A)(i) of this section;

(2)(A)(i) One (1) part-time secretary, whose salary shall not be less than ten thousand dollars (\$10,000) per annum.

(ii) The salary is to be paid in accordance with the pay periods and payroll policy of Lawrence County.

(B) In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Lawrence County;

(3)(A)(i) One (1) full-time secretary, whose salary shall not be less than ten thousand dollars (\$10,000) per annum.

(ii) The salary is to be paid in accordance with the pay periods and payroll policy of Randolph County.

(B) In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Randolph County;

(4)(A)(i) One (1) full-time secretary, whose salary shall not be less than ten thousand dollars (\$10,000) per annum.

(ii) The salary is to be paid in accordance with the pay periods and payroll policy of Sharp County.

(B) In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Sharp County; and

(5)(A)(i) One (1) full-time Jackson County — Third Judicial District secretary, whose salary shall not be less than twenty thousand dollars (\$20,000) per annum.

(ii) The salary is to be paid in accordance with the pay periods and payroll policy of Jackson County.

(B)(i) In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Jackson County.

(ii) The counties of Lawrence, Randolph, and Sharp each shall reimburse Jackson County for a one-eighth ($\frac{1}{8}$) share of the salary, social security, matching retirement, insurance, and all related salary expenses paid for this position.

(f) Nothing in this section shall prevent or prohibit each quorum court in the respective counties in the Third Judicial District from appropriating additional positions, salaries, salary matching requirements, or expenses greater than the amounts mandated in this section should they deem it necessary to do so.

(g) The Prosecuting Attorney of the Third Judicial District shall be allowed additional assistance and employees in each county upon appropriation of the quorum court and approval of the county judge in each respective county.

History. Acts 1981, No. 945, §§ 8, 9; A.S.A. 1947, §§ 24-114.8b, 24-114.8c; Acts 1987, No. 120, §§ 1, 2; 1989, No. 394, § 1; 1993, No. 240, § 1; 1999, No. 1242, § 1; 2005, No. 458, § 1.

A.C.R.C. Notes. Acts 2005, No. 458, § 2, provided: "The provisions of this act shall be retroactive to January 1, 2005."

SUBCHAPTER 11 — SIXTH JUDICIAL DISTRICT

SECTION.

16-21-1107. Appointment of employees.

Effective Dates. Act 2005, No. 2201, § 12: Apr. 13, 2005. Emergency Clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Legislative Joint Auditing Committee and the Division of Legislative Audit provide essential auditing and investigative services to the General Assembly and the State of Arkansas; that to avoid confusion, the General Assembly finds it is necessary to combine the Arkansas Code provisions concerning the Division of Legislative Audit and the local audit section of the division in one Arkansas Code chapter; that to avoid certain undue hardships on public entities of the state, it is also necessary for the General Assembly to provide a basis of financial statement presentation for certain public entities; that the American Institute of Certified Public Accountants’ Statement on Auditing Standards Number 99 re-

garding the detection of fraud requires auditors to document unsubstantiated allegations of fraud in their working papers; and that this act is immediately necessary because the General Assembly finds that the public disclosure of such unsubstantiated allegations do not serve a public purpose and may cause irreparable harm to innocent individuals and public employees. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

16-21-1107. Appointment of employees.

(a) The Prosecuting Attorney of the Sixth Judicial District shall have the power to appoint the following employees without confirmation of any court or tribunal, if the prosecutor receives a federal grant award therefor, at such salaries as are indicated in this subsection or as are authorized in grants awarded from the Drug Law Enforcement Program of the Office of Intergovernmental Services of the Department of Finance and Administration:

Drug unit division chief	\$43,372
Civil litigation attorney	\$36,608
Trial attorney	\$38,071
Financial investigator	\$32,972
Civil litigation investigator	\$25,056
Administrative assistant	\$26,275
Secretary	\$20,248

(b) The Prosecuting Attorney of the Sixth Judicial District shall have the power to appoint deputy prosecuting attorneys to handle cases involving violence against women if the prosecutor receives a federal grant award therefor pursuant to the Violence Against Women Act of

1994, Pub. L. No. 103-322, without confirmation of any court or tribunal, at such salaries as are authorized in the grant.

(c)(1) The positions created in subsection (a) of this section shall be in addition to those created by §§ 16-21-113 and 16-21-1102, and other Arkansas Code provisions.

(2) In the event additional funding becomes available, the prosecuting attorney may employ such additional employees and have expense allowances as are authorized in the grant awards of the program.

(d) All law enforcement investigative positions shall have peace officer jurisdiction throughout the Sixth Judicial District and may serve process issuing out of all courts within the state.

(e)(1)(A) The Prosecuting Attorney of the Sixth Judicial District shall administer the grant.

(B) Expenditures may be made only for purposes of the grant.

(C) All moneys from the grant are:

(i) Appropriated on a continuing basis;

(ii) Subject to the prosecuting attorney's financial management system; and

(iii) Subject to audit by the Division of Legislative Audit.

(2) It is the explicit legislative intent that nothing in this section or §§ 16-21-1108 and 16-21-1109 shall be construed to decrease, supplant, or be substituted for employee positions, salaries, expenses, maintenance and operation expenses, or capital equipment expenditures which the office of the Prosecuting Attorney of the Sixth Judicial District will receive through quorum court appropriation from and after January 1, 1999.

History. Acts 1993, No. 997, § 7; 1995, No. 803, § 7; 1997, No. 522, § 1; 1999, No. 1234, § 2; 2005, No. 2201, § 9.

SUBCHAPTER 12 — SEVENTH JUDICIAL DISTRICT

SECTION.

16-21-1203. Searcy County — Deputy prosecuting attorney.

SECTION.

16-21-1204. Funding.

16-21-1203. Searcy County — Deputy prosecuting attorney.

Pursuant to the direction of the Prosecution Coordination Commission, a part-time deputy prosecuting attorney from any additional personnel provided to the commission by the Eighty-Fourth General Assembly, at such rates and terms as may be determined by the commission and the elected prosecuting attorney, shall be situated in the Searcy County Courthouse within the Twentieth Judicial District.

History. Acts 2003, No. 1755, § 1.

16-21-1204. Funding.

- (a) Searcy County shall continue to bear the responsibility and expense of providing at the county's expense through an annual appropriation the following at sufficient levels for operation, but not less than the amounts appropriated by ordinance in effect February 1, 2003, the cost of facilities, equipment, supplies, salaries, benefits of existing support staff, and other office expenses and an office for the elected prosecuting attorney and deputy prosecuting attorney, and any other line-item appropriation as approved in the 2003 county budget except for deputy prosecuting attorney salary and benefits.
- (b) The county shall provide compensation of additional expenses within the office of the prosecuting attorney and deputy prosecuting attorney when approved by the quorum court.

History. Acts 2003, No. 1755, § 2.

SUBCHAPTER 20 — FIFTEENTH JUDICIAL DISTRICT

SECTION.

16-21-2007. Additional employees — Drug Law Enforcement Program grants.

Effective Dates. Acts 2005, No. 2201. § 12: Apr. 13, 2005. Emergency Clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Legislative Joint Auditing Committee and the Division of Legislative Audit provide essential auditing and investigative services to the General Assembly and the State of Arkansas; that to avoid confusion, the General Assembly finds it is necessary to combine the Arkansas Code provisions concerning the Division of Legislative Audit and the local audit section of the division in one Arkansas Code chapter; that to avoid certain undue hardships on public entities of the state, it is also necessary for the General Assembly to provide a basis of financial statement presentation for certain public entities; that the American Institute of Certified Public Accountants' Statement

on Auditing Standards Number 99 regarding the detection of fraud requires auditors to document unsubstantiated allegations of fraud in their working papers; and that this act is immediately necessary because the General Assembly finds that the public disclosure of such unsubstantiated allegations do not serve a public purpose and may cause irreparable harm to innocent individuals and public employees. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-21-2007. Additional employees — Drug Law Enforcement Program grants.

- (a) The Prosecuting Attorney of the Fifteenth Judicial District shall have the power to appoint the following employees if the prosecutor

receives a grant award therefor, without confirmation of any court or tribunal, at such salaries as are indicated below, or as are authorized in grants awarded from the Office of Intergovernmental Services of the Department of Finance and Administration and the Arkansas Drug Law Enforcement Program:

Law enforcement project coordinator	\$26,000
Law enforcement field supervisor	\$22,000
Law enforcement undercover officer	\$16,500
Law enforcement undercover officer	\$15,125
Bookkeeper-secretary	\$14,000
Bookkeeper-secretary	\$11,000

(b)(1) The positions created in subsection (a) of this section shall be in addition to those created by § 16-21-113 and other Arkansas Code provisions.

(2) In the event additional funding becomes available, the prosecuting attorney may employ such additional employees and have expense allowances as are authorized in the program grant awards.

(c)(1) The office of the Prosecuting Attorney of the Fifteenth Judicial District shall administer its Drug Law Enforcement Program grant from the Office of Intergovernmental Services of the Department of Finance and Administration.

(2) Expenditures may be made only for purposes of the grant.

(3) All moneys from the grant are appropriated on a continuing basis and are subject to the prosecuting attorney's financial management system.

(4) All law enforcement agent positions shall have peace officer jurisdiction throughout the Fifteenth Judicial District and may serve process issuing out of all courts within the state.

(d) It is the explicit legislative intent that nothing in this section shall be construed to decrease, supplant, or be substituted for employee positions, salaries, or expenses, nor maintenance and operation expenses or capital equipment expenditures which the office will receive through quorum court appropriation from and after February 1, 1991.

History. Acts 1991, No. 425, § 1; 2005, No. 2201, § 10.

SUBCHAPTER 22 — SEVENTEENTH JUDICIAL DISTRICT

SECTION.	teenth Judicial District-
16-21-2203. Expense allowance — Seven-	East.

16-21-2203. Expense allowance — Seventeenth Judicial District-East.

(a) The office of the Prosecuting Attorney of the Seventeenth Judicial District shall receive a contingent expense reimbursement of two thousand four hundred dollars (\$2,400) per annum to be borne by the respective counties of the Seventeenth Judicial District as follows:

(1) White County	\$1,400
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- (2) Prairie County 1,000
- (b) The counties shall pay the authorized annual amounts in equal quarterly installments from the county general fund of the respective counties, and the checks shall be made payable to the office of the Prosecuting Attorney of the Seventeenth Judicial District. Disbursements shall be made by the prosecuting attorney for the necessary expenses of the office based upon adequate documentation.
- (c) The prosecuting attorney or his or her deputies may also be allowed additional expenses upon appropriation of the quorum court and approval of the county judge.
- (d) The prosecuting attorney shall be entitled to the following assistants and employees:
 - (1) One (1) chief deputy prosecuting attorney, whose salary shall be not less than forty-five thousand one hundred twenty-eight dollars (\$45,128) per annum. The salary is to be paid in accordance with the pay periods and payroll policy for county employees of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County;
 - (2)(A) One (1) deputy prosecuting attorney for White County, whose salary shall be not less than thirty-five thousand eighteen dollars (\$35,018) per annum. The salary is to be paid in accordance with the pay periods and payroll policy for county employees of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County;
 - (B) One (1) deputy prosecuting attorney for White County, whose salary shall be not less than thirty-one thousand one hundred dollars (\$31,100) per annum. The salary is to be paid in accordance with the pay periods and payroll policy for county employees of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County;
 - (3)(A) One (1) deputy prosecuting attorney for Prairie County, whose salary shall be not less than thirty-three thousand three hundred forty-two dollars (\$33,342) per annum. The salary is to be paid in accordance with the pay periods and payroll policy for county employees of Prairie County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Prairie County.
 - (B) The deputy prosecuting attorney for Prairie County shall be entitled to actual operating expenses of not less than thirteen thousand six hundred forty-six dollars (\$13,646) to cover the cost of telephone, printing, supplies, equipment, janitorial services, cleaning supplies, food, service contracts, accounting, postage, photocopies, travel, training, utilities, rent, juror and witness fees, and such other expenses which, within the discretion of the prosecuting attorney, may be proper expenses of the office in connection with the investigation and prosecution of criminal activity within the district, to be paid by Prairie County;
 - (4) One (1) victim/witness coordinator and office manager, whose salary shall be not less than twenty-three thousand two hundred

ninety-two dollars (\$23,292). The salary is to be paid in accordance with the pay periods and payroll policy of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County;

(5) One (1) victim/witness clerk, whose salary shall be not less than eighteen thousand seven hundred forty-four dollars (\$18,744). The salary is to be paid in accordance with the pay periods and payroll policy of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County;

(6) One (1) receptionist and municipal intake clerk, whose salary shall be not less than eighteen thousand seven hundred forty-four dollars (\$18,744) per annum. The salary is to be paid in accordance with the pay periods and payroll policy of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County;

(7) One (1) hot check clerk, whose salary shall be not less than seventeen thousand five hundred dollars (\$17,500) per annum. The salary is to be paid in accordance with the pay periods and payroll policy of White County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by White County; and

(8) One (1) clerk, whose salary shall be not less than twelve thousand six hundred dollars (\$12,600) per annum. The salary shall be paid in accordance with the pay periods and payroll policy of Prairie County. In addition to the salary, social security, matching retirement, insurance, and all related salary expenses shall be paid by Prairie County.

(e)(1) The quorum courts of the respective counties of the Seventeenth Judicial District shall annually appropriate out of the funds sufficient amounts to cover the salaries and expenses provided for in this section.

(2) The salaries and expenses provided for in this section are minimum provisions only, and the quorum courts of the respective counties may appropriate any additional funds they deem necessary for the efficient operation of the office of the prosecuting attorney.

(f) A deputy prosecuting attorney who is duly appointed in any county of the Seventeenth Judicial District shall have the authority to perform all official acts as deputy prosecuting attorney in all counties within the district.

History. Acts 1995, No. 886, §§ 1-3; 1997, No. 988, § 1; 1999, No. 1001, § 1.

SUBCHAPTER 25 — TWENTIETH JUDICIAL DISTRICT

SECTION.

16-21-2501. Investigators.

Effective Dates. Acts 2009, No. 794, § 2: Apr. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that investigators are a vital tool used in the prosecution of criminal offenders; that currently their powers are not specifically provided; and that this act is immediately necessary because the immediate need for empowered investigators is of vital public interest. Therefore, an emergency is declared to exist, and this

act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-21-2501. Investigators.

(a) The prosecuting attorney of the Twentieth Judicial District is hereby authorized to appoint and employ certified law enforcement officers as investigators for the prosecuting attorney's office.

(b) In addition to the investigators listed in subsection (a) of this section, the prosecuting attorney shall have the authority to appoint or employ with or without pay at his or her discretion other investigators necessary for the administration of justice.

(c)(1) An investigator authorized and appointed shall:

(A) Have the authority to issue process, serve warrants, and possess all powers of a law enforcement officer;

(B) Be a certified law enforcement officer commissioned by the Arkansas Commission on Law Enforcement Standards and Training; and

(C) Be defined as a public safety member.

(2)(A) If an investigator issues process or serves warrants, the office of the prosecuting attorney shall be entitled to receive the same fee a sheriff is authorized to charge under § 21-6-307.

(B) The fee is to be deposited into the hot check fees account.

(d) A deputy prosecuting attorney and a staff member designated by the prosecuting attorney shall be considered a law enforcement officer for all protective, emergency, investigative, and commercial purposes, either individually or in coordination with interagency cooperative investigation and operations.

History. Acts 1999, No. 1238, § 1; inserted "and employ" in (a); rewrote (b); 2009, No. 794, § 1. and added (c) and (d).

Amendments. The 2009 amendment

SUBCHAPTER 27 — TWENTY-SECOND JUDICIAL DISTRICT

SECTION.

16-21-2701. Investigators.

16-21-2701. Investigators.

(a) The Prosecuting Attorney of the Twenty-second Judicial District shall be entitled to appoint and employ one (1) investigator at not less than twenty-one thousand dollars (\$21,000), to be paid by Saline County when approved by the quorum court and payment is approved by the county judge.

(b) In addition to the investigator listed by salary in subsection (a) of this section, the Prosecuting Attorney of the Twenty-second Judicial District shall have the authority to appoint and employ other investigators as necessary for the administration of justice.

(c)(1) All investigators authorized and so appointed shall have the authority to issue process, serve warrants, and possess all law enforcement officer powers.

(2) They shall be certified law enforcement officers commissioned by the Arkansas Commission on Law Enforcement Standards and Training and shall be defined as public safety members under Arkansas law.

(3) In the event that investigators shall issue process or serve warrants, the prosecutor’s office shall be entitled to receive the same fee as provided in § 21-6-307, which shall be deposited into the hot check fees account.

History. Acts 1999, No. 1419, § 1; 2007, No. 211, § 1.

CHAPTER 22
ATTORNEYS AT LAW

SUBCHAPTER.

- 2. ADMISSION AND PRACTICE.
- 3. RIGHTS AND LIABILITIES.

SUBCHAPTER 2 — ADMISSION AND PRACTICE

SECTION.

16-22-211. Corporations or associations — Practice of law or solicitation prohibited — Exceptions — Penalty.

SECTION.

16-22-212. Disbarment in another state — Effects.
16-22-213. [Repealed.]

Effective Dates. Acts 2011, No. 858, § 2: Mar. 31, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there are many indigent, poor, or disadvantaged persons in Arkansas who need legal representation; that there are nonprofit corporations and voluntary associations that already are authorized to provide legal assistance to those in need;

and that this act is immediately necessary to ensure that citizens in Arkansas have the opportunity to receive legal services in a timely manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the

Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

16-22-201. Qualifications for admission.

RESEARCH REFERENCES

ALR. Sexual conduct or orientation as ground for denial of admission to bar. 105 A.L.R.5th 217.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar — Conduct related to admission to bar. 107 A.L.R.5th

167.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar. 108 A.L.R.5th 289.

Criminal record as affecting applicant's moral character for purposes of admission to the bar. 3 A.L.R.6th 49.

16-22-206. Entitlement to practice.

CASE NOTES

ANALYSIS

In General.

Admission Pro Hac Vice.

License.

Out-of-State Attorney.

Pro Se Appearances.

In General.

Where couple's attorneys admitted that they were licensed in Oklahoma, but not Arkansas, they were unauthorized to practice law in Arkansas and the complaint they filed on behalf of the couple was properly dismissed. *Preston v. Univ. of Ark. for Med. Scis.*, 354 Ark. 666, 128 S.W.3d 430 (2003).

Trial court abused its discretion in denying plaintiff's motion for default judgment because the answer filed on behalf of defendant was a nullity under Ark. R. Civ. P. 11(a) and this section as it was not signed by defendant or a person authorized to practice law in Arkansas. Defendant's mother was not authorized to sign the answer on his behalf, and there was nothing in the record to show that she held a valid power of attorney. Because no valid answer was timely filed, a default judgment should have been entered in favor of plaintiff. *White v. Clay*, 2013 Ark. App. 166, — S.W.3d — (2013).

Admission Pro Hac Vice.

Where appellants' attorneys, who were licensed in Oklahoma but not in Arkansas, filed appellants' medical malpractice complaint on the last day of the limitations period but did not file motions for admission pro hac vice until eight months later, the trial court properly dismissed the complaint; since Ark. R. Admis. Bar. XIV required that the pro hac vice motions be filed before the attorneys practiced law in Arkansas, the complaint was a nullity and, thus, no valid complaint was filed within the limitations period. *Preston v. Univ. of Ark. for Med. Scis.*, 354 Ark. 666, 128 S.W.3d 430 (2003).

License.

After trial court entered order finding that child was a member of a family in need of services the father attempted to appeal on the child's behalf but he was not a licensed attorney who could represent the child on an appeal, and the matter was not a final order. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

Out-of-State Attorney.

Appeal from a decision in a workers' compensation case was dismissed as untimely where an attorney from Texas filed notices of appeal on behalf of an insurer since he failed to comply with Ark. R. Admis. Bar XIV until later. As such, the

pleadings were rendered a nullity. *Clarendon Am. Ins. Co. v. Hickok*, 370 Ark. 41, 257 S.W.3d 43 (2007).

Pro Se Appearances.

Because appellant, who was appearing pro se, filed motions on behalf of himself and other parties in the lawsuit, a motion

to dismiss the appeal as to all parties besides appellant was granted because he was engaging in the unauthorized practice of law. *Davidson Props., LLC v. Summers*, 368 Ark. 283, 244 S.W.3d 674 (2006).

16-22-209. Practicing without license — Contempt of court.

RESEARCH REFERENCES

ALR. What constitutes unauthorized practice of law by paralegal. 109 A.L.R.5th 275.

Unauthorized Practice of Law as Contempt. 40 A.L.R.6th 463.

CASE NOTES

Admission Pro Hac Vice.

Where appellants' attorneys, who were licensed in Oklahoma but not in Arkansas, filed appellants' medical malpractice complaint on the last day of the limitations period but did not file motions for admission pro hac vice until eight months later, the trial court properly dismissed the complaint; since Ark. R. Admis. Bar. XIV required that the pro hac vice motions be filed before the attorneys prac-

ticed law in Arkansas, the complaint was a nullity and, thus, no valid complaint was filed within the limitations period. *Preston v. Univ. of Ark. for Med. Scis.*, 354 Ark. 666, 128 S.W.3d 430 (2003).

Cited: *Concrete Wallsystems of Ark., Inc. v. Master Paint Indus. Coating Corp.*, 95 Ark. App. 21, 233 S.W.3d 157 (2006); *Clarendon Am. Ins. Co. v. Hickok*, 370 Ark. 41, 257 S.W.3d 43 (2007).

16-22-211. Corporations or associations — Practice of law or solicitation prohibited — Exceptions — Penalty.

(a) It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney at law for any person in any court in this state or before any judicial body, to make it a business to practice as an attorney at law for any person in any of the courts, to hold itself out to the public as being entitled to practice law, to tender or furnish legal services or advice, to furnish attorneys or counsel, to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume or advertise the title of lawyer or attorney, attorney at law, or equivalent terms in any language in such a manner as to convey the impression that it is entitled to practice law or to furnish legal advice, service, or counsel or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney at law or not, it has, owns, conducts, or maintains a law office or any office for the practice of law or for furnishing legal advice, services, or counsel.

(b) It also shall be unlawful for any corporation or voluntary association to solicit itself by or through its officers, agents, or employees any claim or demand for the purpose of bringing an action thereon or of

representing as attorney at law or for furnishing legal advice, services, or counsel to a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding that has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy.

(c) The fact that any officer, trustee, director, agent, or employee shall be a duly and regularly admitted attorney at law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited in this section, nor shall that fact be a defense upon the trial of any of the persons mentioned for a violation of the provisions of this section.

(d) This section shall not apply to a:

(1) For-profit corporation or voluntary association lawfully engaged in:

(A) The examination and insuring of titles to real property; or

(B) Employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may become a party; or

(2) Nonprofit corporation or voluntary association lawfully engaged in representing or assisting an indigent, poor, or disadvantaged person as a client in a civil or criminal matter, provided that any legal services rendered by a nonprofit corporation or voluntary association are furnished through duly licensed attorneys in accordance with rules governing the practice of law in Arkansas.

(e)(1) Nothing contained in this section shall be construed to prevent a corporation from furnishing to any person lawfully engaged in the practice of law such information or such clerical services in and about his or her professional work as may be lawful, except for the provisions of this section, if at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his or her clients for the information and services so received.

(2) However, no corporation shall be permitted to render any services that cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.

(f)(1) Any corporation or voluntary association violating any of the provisions of this section shall be guilty of a violation and punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000).

(2) Every officer, trustee, director, agent, or employee of the corporation or voluntary association who directly or indirectly engages in any of the acts prohibited in this section or assists such a corporation or voluntary association to do such prohibited acts shall be guilty of a violation and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000).

History. Acts 1929, No. 182, §§ 1-6; Pope's Dig., §§ 3630-3635; Acts 1958 (2nd Ex. Sess.), No. 11, § 1; A.S.A. 1947, §§ 25-205 — 25-210; Acts 2005, No. 1994, § 82; 2011, No. 858, § 1.

Amendments. The 2011 amendment

added (d)(2); inserted "For-profit" at the beginning of (d)(1); and deleted "nor shall it prohibit a corporation or a voluntary association from" at the beginning of (d)(1)(B).

RESEARCH REFERENCES

ALR. What constitutes unauthorized practice of law by paralegal. 109 A.L.R.5th 275.

Ark. L. Rev. Swimming Upstream: A

Final Attempt at Persuasion on the Issue of Corporate Pro Se Representation in Arkansas State Court, 54 Ark. L. Rev. 475 (2001).

CASE NOTES

ANALYSIS

Appearance.

Arbitration Proceedings.

Insurers.

Appearance.

An appeal in an action by a foreign corporation was dismissed where, inter alia, the corporation was not represented by a person authorized to practice law in Arkansas. *Roma Leathers, Inc. v. Ramey*, 68 Ark. App. 1, 2 S.W.3d 82 (1999).

Arbitration Proceedings.

Nonlawyer's representation of a corporation in arbitration proceedings constitutes the unauthorized practice of law. Arbitration proceedings bear significant indicia of legal proceedings under the Uni-

form Arbitration Act, which has been adopted by Arkansas, and if a hearing is held during arbitration, the parties have the right to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing. *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, 388 S.W.3d 444 (2012).

Insurers.

Insurance company was prohibited by this section from appointing one of its in-house attorneys to represent a defendant insured in litigation arising out of an accident. It was undisputed that the insurer was not and would not become a party to the lawsuit as provided in one of the exceptions to this section. *Brown v. Kelton*, 2011 Ark. 93, 380 S.W.3d 361 (2011).

16-22-212. Disbarment in another state — Effects.

(a) It shall be unlawful for any person to practice law or attempt to practice law in any court in this state or to solicit business as or in any manner represent himself or herself to be an attorney at law when such a person so practicing or attempting to practice law or soliciting business as or representing himself or herself to be an attorney at law has previously been disbarred from the practice of law in any other state of the United States of America while a resident of that state.

(b)(1) No person shall be admitted to practice law in this state who has been disbarred from the practice of law in any other state.

(2) The disbarment of any person from the practice of law in any other state shall operate as a disbarment of the person from the practice of law in this state under any license, permit, or enrollment issued to the person by any court in this state prior to his or her disbarment in the other state.

(3) A certified copy of the order, judgment, or decree of the disbarment in the other state shall be prima facie evidence of the disbarment in the other state when filed in any court in this state.

(c) It shall be unlawful for any judge of any court of record, district judge, mayor, or other judge or magistrate to knowingly permit any person to practice law or attempt to practice law, or to appear in any manner as an attorney at law before him or her or in his or her court in violation of any of the terms and provisions of this section.

(d)(1) Any person violating the terms of this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(2) Each violation of this section shall constitute a separate offense.

History. Acts 1935, No. 168, §§ 1-4; §§ 25-201 — 25-204; Acts 2003, No. 1185, Pope’s Dig., §§ 633, 635-637; A.S.A. 1947, § 181; 2005, No. 1994, § 82.

16-22-213. [Repealed.]

Publisher’s Notes. This section, concerning advertising to directly solicit clients or encourage litigation, was repealed

by Acts 2005, No. 1994 § 525. The section was derived from Acts 1987, No. 317, §§ 1, 2.

SUBCHAPTER 3 — RIGHTS AND LIABILITIES

SECTION.

16-22-304. Lien of attorney created.

16-22-310. Liability for civil damages.

SECTION.

16-22-311. Reports of visits with incarcerated indigent clients.

16-22-301. Legislative intent.

CASE NOTES

ANALYSIS

Applicability.

Attorney-Client Relationship.

Applicability.

Attorney that had been retained by an employee to represent the employee in a workers’ compensation case, but then had been told by the employee that he wanted to end the case, was entitled to assert a lien on a final settlement that was reached after the employee hired a second lawyer instead of abandoning the case; the fact that the attorney had been involved in the case before there was any controversy did not preclude the attorney from imposing a lien for fees. *Wren v. DeQueen Sand & Gravel Co.*, 87 Ark. App. 212, 189 S.W.3d 522 (2004).

Attorney-Client Relationship.

Without an attorney-client relationship, there is no basis for claiming an attorney’s fee under the statute. *Fox v. AAA U-Rent It*, 341 Ark. 483, 17 S.W.3d 481 (2000).

Attorneys are entitled to obtain a lien for services based on agreements with their clients and, while an attorney’s lien may in some instances be enforceable against another attorney, such a lien is not created where there is no attorney/client relationship; thus, a former employer was not entitled to such a lien on a settlement obtained by a former employee in a class action suit. *Morgan v. Chandler*, 367 Ark. 430, 241 S.W.3d 224 (2006).

16-22-302. Compensation governed by contract.**CASE NOTES**

Cited: Fox v. AAA U-Rent It, 341 Ark. 483, 17 S.W.3d 481 (2000).

16-22-303. Compromise or settlement without attorney's consent — Effect.**CASE NOTES****Collection of Fee.**

Because it was “patently clear” that the attorney’s Pulaski County suit over disputed contingency fees from a former client’s settlement with the insurer had no chance of success and was a collateral attack, where the settlement was entered in Cleburne County, and the proper venue

was in Cleburne County, and because the attorney attempted to manufacture venue by claiming unwarranted costs and expenses, the trial court did not abuse its discretion in imposing sanctions against the attorney under Ark. R. Civ. P. 11. *Pomtrey v. State Farm Mut. Auto. Ins. Co.*, 353 Ark. 657, 121 S.W.3d 147 (2003).

16-22-304. Lien of attorney created.

(a)(1) From and after service upon the adverse party of a written notice signed by the client and by the attorney at law, solicitor, or counselor representing the client, which notice is to be served by certified mail and a return receipt being required to establish actual delivery of the notice, the attorney at law, solicitor, or counselor serving the notice upon the adversary party shall have a lien upon his or her client’s cause of action, claim, or counterclaim, which attaches to any settlement, verdict, report, decision, judgment, or final order in his or her client’s favor, and the proceeds thereof in whosoever’s hands they may come.

(2) The lien cannot be defeated and impaired by any subsequent negotiation or compromise by any parties litigant.

(3) However, the lien shall apply only to the cause or causes of action specifically enumerated in the notice.

(b) In the event that the notice is not served upon the adverse party by an attorney at law, solicitor, or counselor representing his client, the same lien created in this section shall attach in favor of the attorney at law, solicitor, or counselor from and after the commencement of an action or special proceeding or the service upon an answer containing a counterclaim, in favor of the attorney at law, solicitor, or counselor who appears for and signs a pleading for his or her client in the action, claim, or counterclaim in which the attorney at law, solicitor, or counselor has been employed to represent the client.

(c)(1) This lien shall apply to proceedings before the Workers’ Compensation Commission.

(2) The lien shall attach from the date a notice of claim is filed with the commission, if served by certified mail, return receipt requested, or from the date the commission mails notice of the claim to the employer

or carrier, regardless of whether this mailing by the commission is by certified mail or regular mail, whichever date occurs first.

(d)(1) This lien shall apply to procedures set forth in § 18-50-101 et seq.

(2) The lien shall attach on the date a mortgagee's power of attorney or beneficiary's appointment of substitute trustee is recorded pursuant to § 18-50-102.

(3) If a mortgagee's power of attorney or beneficiary's appointment of substitute trustee is not recorded, then the lien shall attach on the date a notice of default and intention to sell is mailed in accordance with § 18-50-104.

(4) The lien shall secure all work performed by the attorney for the mortgagee or beneficiary, including, but not limited to, expenses incurred by the attorney for abstracting and title insurance services and giving notice of the trustee's or mortgagee's sale.

(e) The court or commission before which an action was instituted, or in which an action may be pending at the time of settlement, compromise, or verdict, or in any circuit court of proper venue, upon the petition of the client or attorney at law, shall determine and enforce the lien created by this section.

History. Acts 1989, No. 293, § 1; 1991, No. 1229, § 1; 2003, No. 1047, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Practice, Procedure, and Courts, Attorneys Liens, 26 U. Ark. Little Rock L. Rev. 448.

Annual Survey of Case Law: Contract Law, 29 U. Ark. Little Rock L. Rev. 845.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Collection of Fee.
Notice.
Reasonable Fees.

Construction.

Attorney that had been retained by an employee to represent the employee in a workers' compensation case, but then had been told by the employee that he wanted to end the case, was entitled to assert a lien on a final settlement that was reached after the employee hired a second lawyer instead of abandoning the case; the fact that the attorney had been involved in the case before there was any

controversy did not preclude the attorney from imposing a lien for fees. *Wren v. DeQueen Sand & Gravel Co.*, 87 Ark. App. 212, 189 S.W.3d 522 (2004).

Attorneys are entitled to obtain a lien for services based on agreements with their clients and, while an attorney's lien may in some instances be enforceable against another attorney, such a lien is not created where there is no attorney/client relationship; thus, a former employer was not entitled to such a lien on a settlement obtained by a former employee in a class action suit. *Morgan v. Chandler*, 367 Ark. 430, 241 S.W.3d 224 (2006).

Applicability.

Court properly denied attorney a lien on client's real property because the case did not come within the province of the attor-

ney's lien statute where the attorney sought to extend a lien over property that the client already owned and was not the subject of the litigation; this section is limited to cases where there has been an actual recovery of money or property. *Northwest Ark. Recovery, Inc. v. Davis*, 89 Ark. App. 62, 200 S.W.3d 481 (2004).

Collection of Fee.

Because it was "patently clear" that the attorney's Pulaski County suit over disputed contingency fees from a former client's settlement with the insurer had no chance of success and was a collateral attack, where the settlement was entered in Cleburne County, and the proper venue was in Cleburne County, and because the attorney attempted to manufacture venue by claiming unwarranted costs and expenses, the trial court did not abuse its discretion in imposing sanctions against the attorney under Ark. R. Civ. P. 11. *Pomtree v. State Farm Mut. Auto. Ins. Co.*, 353 Ark. 657, 121 S.W.3d 147 (2003).

Notice.

Chancellor erred in finding that the attorney's lien could not be enforced upon the check the client gave her boyfriend based on a lack of notice to the boyfriend; once the attorney filed the petition for citation of contempt on behalf of the client, an attorney's lien attached to any

judgment the client received as a result of the attorney's work. *Froelich v. Graham*, 349 Ark. 692, 80 S.W.3d 360 (2002).

Purpose of this section was to ensure that the adverse party was aware of the attorney's intention to claim a lien on the proceeds of the litigation before the settlement was paid; the record showed that the adverse parties' attorney sent a letter to the law firm and the client's new attorney acknowledging the law firm's claim such that there was no question that the adverse parties had actual notice of the asserted lien before any settlement money was paid to the client. *Mack v. Brazil, Adlong & Winningham, PLC*, 357 Ark. 1, 159 S.W.3d 291 (2004).

Reasonable Fees.

Once it was determined that a law firm was discharged by its client for cause, the firm's lien under this section, the Arkansas' attorney-lien statute, was determined on a quantum-meruit basis, despite a contingent-fee contract between the firm and the client, to provide compensation for the reasonable value of the firm's services. *Harrill & Sutter, PLLC v. Kosin*, 2011 Ark. 51, 378 S.W.3d 135 (2011), rehearing denied, *Harrill & Sutter P.L.L.C. v. Kosin*, — S.W.3d —, 2011 Ark. LEXIS 361 (Ark. Mar. 17, 2011).

Cited: *Teasley v. Hermann Cos.*, 92 Ark. App. 40, 211 S.W.3d 40 (2005).

16-22-306. Negligence of attorney resulting in dismissal — Liability for costs and damages.

CASE NOTES

Statute of Limitations.

Clients' legal malpractice suit under this section for failure of a law firm to properly file a medical malpractice suit, was barred by the three-year statute of limitations under § 16-56-105(3), because, under the occurrence rule, the clients' legal malpractice action ran no later

than three years after the last day that their medical malpractice action could have been properly instituted. *Rice v. Ragsdale*, 104 Ark. App. 364, 292 S.W.3d 856 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 427 (May 14, 2009).

16-22-308. Attorney's fees in certain civil actions.

RESEARCH REFERENCES

ALR. *Recovery of Computer-Assisted Research Costs as Part of or in Addition to Attorney's Fees Under State Law.* 33 A.L.R.6th 305.

Ark. L. Notes. Brill, *Arkansas Law of Damages*, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

Ark. L. Rev. Recent Development, At-

torney's Fees — Prevailing Party Status
 BKD, LLP v. Yates, 59 Ark. L. Rev. 1005.
 U. Ark. Little Rock L. Rev. Annual

Survey of Case Law: Practice, Procedure,
 and Courts, 29 U. Ark. Little Rock L. Rev.
 905.

CASE NOTES

ANALYSIS

Construction.
 Applicability.
 Bankruptcy.
 Breach of Contract.
 Computation of Fees.
 Contingency Fees.
 Court's Authority.
 Declaratory Judgment.
 Discretion of Court.
 Fees Allowed.
 Fees Denied.
 Not Requested.
 Prevailing Party.
 Rescission.
 Reversal of Judgment.
 Summary Judgment.
 Time Limitations.
 Tort Action.

Construction.

Trial court did not err in awarding plaintiff attorney's fees and costs as the prevailing party under this section, then ruling they were not recoverable as a "preliminary expense" under § 14-92-238; the attorney's fees and costs were not "preliminary expenses" and, hence, not subject to a tax levy against the district's land. *Perkins v. Cedar Mt. Sewer Improvement Dist. No. 43*, 360 Ark. 50, 199 S.W.3d 667 (2004).

Applicability.

Attorney fees should not have been awarded in an action involving a mortgagee's failure to cancel a mortgage because the action was not primarily based on contract; the action was based on a violation of § 18-40-104 and negligence. *Nationsbank Mortg. Corp. v. Hopkins*, 82 Ark. App. 91, 114 S.W.3d 757 (2003).

Trial court abused its discretion in awarding all of appellees' requested attorneys' fees where only one of their causes of action provided for fees; nothing in this section or § 4-88-113(f) provides that a party is entitled to an award of all fees in cases where multiple claims have been pursued. *FMC Corp. v. Helton*, 360 Ark. 465, 202 S.W.3d 490 (2005).

Fireman who was reinstated to his previous rank and awarded backpay following a suspension and demotion in a disciplinary proceeding was not entitled to an award of attorney's fees as the prevailing party because the fireman had no contract with the fire department, thus, this section was not applicable. *City of Little Rock v. Hudson*, 366 Ark. 415, 236 S.W.3d 509 (2006).

Attorney fee award, pursuant to this section, was premature because the prevailing party could not be determined until the end of the breach of contract action. *Heflin v. Brackelsberg*, 2010 Ark. App. 261, 374 S.W.3d 755 (2010).

Bankruptcy.

Mortgage lien was not perfected and could be avoided by a trustee under 11 U.S.C.S. §§ 544(a) and 550(a), who was also entitled to an award of reasonable attorney fees, because an acknowledgment that did not comply with §§ 16-47-106 and 16-47-101 did not provide constructive notice. The omission of the debtor's name alone would not have been fatal, as the omitted information could have been filled in by reference to the document as a whole; however, omission of the name plus the use of a different gender led to an ambiguity that would have required extrinsic evidence. *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Chapter 12 debtors' in possession 11 U.S.C.S. § 544 cause of action allowed the debtors to set aside creditor bank's mortgage lien due to the debtors' bona fide purchaser status, but was a cause of action peculiar to the Bankruptcy Code and differed from the types of actions which this section addressed. Thus this section was inapplicable to the avoidance action and the debtors were not entitled to their attorney's fees. *Caine v. First State Bank (In re Caine)*, 462 B.R. 688 (Bankr. W.D. Ark. 2011).

Debtor's obligation to pay attorneys' fees arising from a state court lawsuit involving breach of contract was dis-

chargeable because the fee award was based on the parties' agreement that provided that the losing party would pay for any dispute that arose between the parties, and this section, that awards attorneys' fees and costs to the prevailing party on a breach of contract claim. *Clear Sky Props. LLC v. Roussel (In re Roussel)*, 483 B.R. 915 (Bankr. E.D. Ark. 2012).

Breach of Contract.

This section does not allow the discretionary award of attorney's fees to a prevailing insurer in an action for breach of contract. *Employers Surplus Ins. Co. v. Murphy Oil USA, Inc.*, 338 Ark. 299, 61 S.W.3d 807, 993 S.W.2d 481 (1999).

Where both contract and tort claims are advanced, an award of attorney's fees to the prevailing party is proper only when the action is based primarily in contract. *Marcum v. Wengert*, 70 Ark. App. 477, 20 S.W.3d 430 (2000), rev'd, 344 Ark. 153, 40 S.W.3d 230 (2001).

Because the trial court did not give its reasons for failing to award tenants, the prevailing parties in litigation over an alleged breach of a lease, their attorney's fees, the case was remanded for the court to consider whether to make such an award. *Vereen v. Hargrove*, 80 Ark. App. 385, 96 S.W.3d 762 (2003).

Where the homeowner alleged that the builder breached an implied warranty because the home's foundation was defective due to the soil properties and sought damages in the amount of repairs made by the homeowner, the case was a contract action, as opposed to a tort action, and provided the trial court with a basis to award the builder, the prevailing party, attorney fees under this section. *Curry v. Thornsberry*, 81 Ark. App. 112, 98 S.W.3d 477 (2003), aff'd, 354 Ark. 631, 128 S.W.3d 438 (2003).

Trial court did not abuse its discretion in awarding attorney's fees to municipal improvement districts in a suit where the districts prevailed over the trustee of a public bond financing by proving a breach of contract claim against the trustee, resulting in reimbursement to bond funds of attorney's fees expended by the trustee in unwarranted litigation. *First United Bank v. Phase II, Edgewater Addition Residential Prop. Owners Improvements Dist. No. 1 of Maumelle*, 347 Ark. 879, 69 S.W.3d 33 (2002).

Where court found that the damages sought by home buyers were for the costs of correcting defects to the house, the complaint stated a cause of action on the contract; the buyers' action for breach of the implied warranty of fitness and habitability was an action in contract and, thus, the trial court properly awarded attorney's fees to a home builder. *Curry v. Thornsberry*, 354 Ark. 631, 128 S.W.3d 438 (2003).

In homeowners' defective construction case, the builder was entitled to a directed verdict because the statute of limitations had expired and, as it was an action "in contract" concerning the implied warranty of habitability, the trial court properly awarded the builder attorney's fees under this section. *Curry v. Thornsberry*, 354 Ark. 631, 128 S.W.3d 438 (2003).

Minor should have been allowed to recover attorney fees in his action against a bank because the action sounded in contract; the bank's obligations would not have arisen had it not entered into a contract with the minor's guardian to accept funds' deposit. *Jiles v. Union Planters Bank*, 90 Ark. App. 245, 205 S.W.3d 187 (2005).

Plaintiff borrowers' argument that defendant bank's fee request was excessive because it included fees and costs on appeal was well-taken; fees could not be awarded on appeal of a contract case pursuant to this section. Even if there was authority to allow the fees, the court would have exercised its discretion not to do so in the instant case because on remand, the court granted summary judgment on an issue that could have been, but was not, argued in the appeals court and the failure to raise the issue earlier resulted in an unnecessary round of litigation following appeal. *Mt. Pure LLC v. Bank of Am., — F. Supp. 2d —*, 2008 U.S. Dist. LEXIS 115227 (E.D. Ark. July 8, 2008).

Although plaintiff borrowers' breach of contract claim was submitted to arbitration, the court concluded that their remaining promissory estoppel claim was based on contract, and the court could not find any material way in which the briefs and arguments would have differed had there been no count alleging promissory estoppel; consequently, the court concluded that the action litigated was based primarily on the breach of contract claim

so that fees could be awarded pursuant to this section to defendant bank as prevailing party. *Mt. Pure LLC v. Bank of Am.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 115227 (E.D. Ark. July 8, 2008).

In an action for breach of contract arising from an employment agreement and purchase agreement, the jury rendered a verdict for the company but the trial court denied its motion for attorneys' fees under this section. The trial court held that this section did not apply because the parties intended that in the event of dispute arising out of the agreements, each party would bear its own costs and attorneys' fees. *Asbury Auto. Used Car Ctr. v. Brosh*, 375 Ark. 121, 289 S.W.3d 88 (2008).

Award of attorney's fees under this section was proper because the debtor claimed the bank violated the promissory note when it failed to relieve the lien on the property after full payment. *First State Bank of Crossett v. Fowler*, — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 27005 (W.D. Ark. Mar. 22, 2010).

Where the debtor objected to her deed of trust secured creditor's claim pursuant to 11 U.S.C.S. § 502(b) and Fed. R. Bankr. P. 3007, asserting breach of contract, the claim was in part unenforceable due to the miscalculation of charges and interest, and misapplying payments, the debtor was entitled to an award of damages and reasonable attorney's fees for breach of contract under this section. *Bateman v. S. Dev. Corp. (In re Bateman)*, 435 B.R. 600 (Bankr. E.D. Ark. 2010).

Although a commercial tenant was a prevailing party in a breach of lease action against a landlord, and allowed to recover reasonable attorney fees, the trial court reduced the tenant's attorney fee request without explanation or reference to certain factors, which warranted a remand. *Conway Commer. Warehousing, LLC v. FedEx Freight East, Inc.*, 2011 Ark. App. 51, 381 S.W.3d 94 (2011).

Trial court did not err in awarding attorney fees to real estate buyers in their breach of contract action because their request for fees was based on a contractual provision, not the statute; hence, the buyers' inclusion of a tort claim for damages was no impediment to an award of fees authorized under the real estate contract. *Marx Real Estate Invs., LLC v. Coloso*, 2011 Ark. App. 426, 384 S.W.3d 595 (2011).

In this breach of contract action, plaintiff was entitled to an attorneys' fee award in the amount of one-third of the total judgment because the attorneys were experienced and reputable attorneys with superior legal skills, the legal issues in this case arose from complicated and hotly disputed factual questions, and plaintiff entered a one-third contingency fee agreement with counsel. *Razorback Concrete Co. v. Dement Constr. Co. LLC*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 76761 (E.D. Ark. June 4, 2012).

Trial court erred in awarding attorney's fees to appellees because its dismissal of appellant's complaint under Ark. R. Civ. P. 12(b)(6) was improper; appellant alleged facts sufficient to support the application of fraudulent concealment and that the statutes of limitation were tolled. *Russenberger v. Thomas Pest Control, Inc.*, 2012 Ark. App. 86, 394 S.W.3d 303 (2012).

Computation of Fees.

Where the trial court properly found that a company was entitled to attorney fees, but reduced the hourly rate charged without explanation, the appellate court remanded the matter back to the trial court to determine if the reduction in the hourly rate was proper. *Swink v. Lasiter Constr., Inc.*, 94 Ark. App. 262, 229 S.W.3d 553 (2006).

In members' breach of contract action against a country club, the trial court did not abuse its discretion in awarding attorney fees to the members in the amount of \$6,000, even though their total recovery was only \$5,242, because there was no fixed formula in determining what was a reasonable attorney fee. *Millwood-RAB Mktg., Inc. v. Blackburn*, 95 Ark. App. 253, 236 S.W.3d 551 (2006).

Contingency Fees.

Award of attorney fees under this section in favor of a freight agent in its breach of contract suit against a carrier was proper even though it was based on a contingency fee that was significantly larger than the lodestar figure, as the district court considered all relevant factors in determining the amount of fees, such as counsel's experience, reputation, and skills; the degree to which the agent prevailed; and the time that counsel spent on the case, which included a six-month period where he turned away other cli-

ents. *All-Ways Logistics, Inc. v. USA Truck, Inc.*, 583 F.3d 511 (8th Cir. 2009).

As long as a trial court is guided by the relevant factors, fee awards based in part on a contingency agreement are permissible under Arkansas law. The fact that the agreed upon fee was a contingency fee does not automatically entitle the attorney to that amount under this section. *All-Ways Logistics, Inc. v. USA Truck, Inc.*, 583 F.3d 511 (8th Cir. 2009).

Court's Authority.

This section permits trial courts, but not appellate courts, to assess attorney fees. *Millwood-RAB Mktg., Inc. v. Blackburn*, 95 Ark. App. 253, 236 S.W.3d 551 (2006).

Declaratory Judgment.

Statutory attorney's fees under this section were not available in an action brought under the Declaratory Judgment Act; however, costs were available under § 16-111-111. *Hanners v. Giant Oil Co. of Ark., Inc.*, 373 Ark. 418, 284 S.W.3d 468 (2008).

Discretion of Court.

The statute is permissive and the award of attorneys fees is within the discretion of the trial court. *Ouachita Trek & Dev. Co. v. Rowe*, 341 Ark. 456, 17 S.W.3d 491 (2000).

Language in buyer's e-mail did not constitute a sufficient writing for purposes of the statute of frauds because it did not evince an agreement between retailer/buyer and importer/seller on price mark-downs; attorney fees in contract dispute were discretionary. *General Trading Int'l, Inc. v. Wal-Mart Stores, Inc.*, 320 F.3d 831 (8th Cir. 2003).

Under this section, no award of fees was mandatory, and an insurer was not entitled to attorneys' fees simply because it prevailed. *Angelo Iafrate Constr., LLC v. Potashnick Constr., Inc.*, 370 F.3d 715 (8th Cir. 2004).

Beverage distributor was not improperly denied attorney's fees pursuant to this section after it had obtained a judgment against a beverage producer for breach of contract because no award of attorney's fees was mandatory under this section, the distributor was not considered a prevailing party by the district court since the producer had prevailed on a counterclaim for breach of an implied cov-

enant of good faith and fair dealing, and the distributor asserted no facts to support its contention that it merited an award of attorney's fees under this section despite its own breaching conduct. *Southern Wine & Spirits of Nev. v. Mt. Valley Spring Co.*, 712 F.3d 397 (8th Cir. 2013).

Fees Allowed.

Where the trial judge agreed with a crop lender that its security interest in a government crop check was superior to the farm owner's, an award of attorney's fees in that contract claim was appropriate, however, the trial judge erred in awarding attorney's fees regarding a conversion claim. *Nef v. AG Servs. of Am., Inc.*, 79 Ark. App. 100, 86 S.W.3d 4 (2002).

In a case where a teacher alleged that a school district breached its contract with the teacher by violating the Arkansas Teacher Fair Dismissal Act (TFDA) and that such breach entitled him to all the monetary benefits which he had under the 1999-2000 contract, plus interest and attorney's fees, because the district failed to provide written notice of the problems or evaluations as required by § 6-17-1504 of the TFDA, the district failed to strictly comply with the statutory provisions of the TFDA and the teacher's contract was renewed by operation of law; however, the teacher's refusal to mitigate his damages limited his damages to the difference in what he earned under the 1999-2000 contract and what he could have earned had he accepted the offer of the district, but the teacher was entitled to reasonable attorney's fees pursuant to this section. *Sheets v. Dollarway Sch. Dist.*, 82 Ark. App. 539, 120 S.W.3d 119 (2003).

Attorney's fees were properly awarded to a prevailing party in an action seeking an accounting of a partnership's assets because the partnership was based on a contract. *Harrison v. Harrison*, 82 Ark. App. 521, 120 S.W.3d 144 (2003).

Although attorney fees were not available in a contract rescission case, the case began as a proceeding to foreclose on a home and enforce a promissory note and the buyers prevailed on those grounds; therefore, they were the prevailing party in a foreclosure action entitling them to attorney fees. *Hudson v. Hilo*, 88 Ark. App. 317, 198 S.W.3d 569 (2004).

Defendant insurer was liable under the policy it issued to manufacturer for sums

awarded to plaintiff farmers as attorney's fees in the underlying action by the farmers against the manufacturer for crop damage because, in addition to coverage for those sums insured became legally obligated to pay as damages because of property damage to which the insurance applied, the policy also covered certain "supplementary payments" and the attorney's fee award was part of the "costs" taxed against the manufacturer in the underlying lawsuit; as such, the award was a "supplementary payment" covered under the policy. *Ferrell v. W. Bend Mut. Ins. Co.*, 393 F.3d 786 (8th Cir. 2005).

Trial court did not err in awarding home sellers attorney fees in buyers' action against sellers for breach of contract and fraud because the issue of whether the action was primarily a contract action in which attorney fees were authorized was moot; buyers paid the attorney fees and, in the absence of an explanation for the payment of a satisfaction of judgment, the court considered it as having been voluntarily paid, thus rendering the appeal of that judgment moot. *Barringer v. Hall*, 89 Ark. App. 293, 202 S.W.3d 568 (2005).

Where supplier's bank wrongly encoded a check and supplier's claim against the supplier's bank was premised on its failure to use ordinary care in complying with the Uniform Commercial Code, attorney's fees were warranted because the amount of the claim was readily ascertainable. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

In a domestic relations case, the trial court appropriately granted an ex-wife's motion for attorney's fees pursuant to this section and § 9-12-309 because her ex-husband, in challenging the attorney's fee award, offered only his own reasoning and the language of the statutes in support of his argument; he cited no legal authority in support of his position, which was a sufficient reason to affirm the trial court's ruling. *Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007).

Award of attorney fees to a corporation in a breach of contract action against a home builder was not unreasonable merely because the fee award was nearly the sum of the judgment. *Crown Custom Homes, Inc. v. Buchanan Servs.*, 2009 Ark. App. 442, 319 S.W.3d 285 (2009).

In buyers' declaratory-judgment action, attorney fees were properly awarded to

buyers under this section because the case involved a contract action—either through the seller's counterclaim or the fact that the declaratory-judgment action arose from the seller's breach of contract. *Screeeton v. Asco Vending, Inc.*, 2010 Ark. App. 230, 374 S.W.3d 749 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 389 (Aug. 6, 2010).

Section 18-50-117 required nonresident mortgagee to be authorized to do business in Arkansas, and noncompliance was not cured by an attorney-in-fact under § 18-50-102, not superseded by Ark. Code Ann. § 4-27-1501, and not preempted by 12 U.S.C.S. § 24 and 371 of the National Banking Act. Attorney's fees were awarded under this section. *In re Johnson*, 460 B.R. 234 (Bankr. E.D. Ark. 2011).

As appellee was the prevailing party in a lawsuit involving a breach-of-contract claim, it was properly awarded attorney fees under this section. *Crockett v. C.A.G. Invs., Inc.*, 2011 Ark. 208, 381 S.W.3d 793 (2011).

District court's calculation of an attorney fee award was supported by the detailed affidavits and time sheets attached to appellees' motion for attorneys' fees; because the case involved a complicated factual background, the potential for millions of dollars in liability, and a 10 count initial complaint that included 555 pages of exhibits, the district court did not abuse its discretion in awarding attorneys' fees. *Retro TV Network, Inc. v. Luken Commun., LLC*, 696 F.3d 766 (8th Cir. 2012).

Because counsel for defendants were experienced attorneys with excellent legal skills, potentially millions of dollars were at stake and defendants prevailed on all of plaintiff's claims, and the attorneys charged reasonable hourly rates, under this section, counsel for defendants were entitled to an award of \$46,795 in attorneys fees. *Retro TV Network, Inc. v. Luken Commun., LLC*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 27679 (E.D. Ark. Mar. 2, 2012).

Fees Denied.

The chancery court did not abuse its discretion in refusing to award cross-appellants attorney's fees where their argument was nothing more than an assertion that they were entitled to attorney's fees because of the manner in which they prevailed, that is, by winning a motion to

dismiss at the chancery court level. *Jones v. Abraham*, 67 Ark. App. 304, 999 S.W.2d 698 (1999), *aff'd*, 341 Ark. 66, 15 S.W.3d 310 (2000), *overruled in part*, *Lamontagne v. Ark. Dep't of Human Servs.*, 2010 Ark. 190, 366 S.W.3d 351 (2010).

Attorney's fees were properly denied in an action to enforce an oral contract to make a will where the trial court found that the plaintiffs acted in good faith and that their attorneys did an excellent job under the constraints of Arkansas law and the rules of evidence and the fact that they were trying to prove something that occurred years and years ago with deceased witnesses. *Jones v. Abraham*, 341 Ark. 66, 15 S.W.3d 310 (2000).

Where mental health facility obtained a default judgment against psychiatrist and was awarded \$775,000 for indemnification, because the trial court's order offered no statutory authority for awarding attorneys' fees to the mental health facility, and because that award was contrary to the general rule against awarding such fees in the absence of a statute or rule, that portion of the trial court's order was reversed. *Jean-Pierre v. Plantation Homes of Crittenden County, Inc.*, 350 Ark. 569, 89 S.W.3d 337 (2002).

Attorney's fees were not awarded in an action seeking specific performance of a real estate contract because itemized bills were not provided to the circuit court and there was no showing as to why allegedly privileged information contained therein could not have been redacted. *Van Carr Enters. v. Hamco, Inc.*, 365 Ark. 625, 232 S.W.3d 427 (2006).

Although two writings entered into for the construction of a house were not valid contracts, once the house was built and the debtors moved in, that took the contract out of § 4-59-101(a)(4), the statute of frauds, and based on the debtors' testimony regarding the parties' oral agreement with respect to the price to be paid, which the court found credible, the creditors' proof of claim for an additional amount was disallowed. Although the debtors were the prevailing party, they were not entitled to attorneys fees under this section, as both parties were responsible for an incoherent agreement with no agreed upon purchase price. *In re Cameron*, 452 B.R. 754 (Bankr. E.D. Ark. 2011).

As claims by an estate executrix of fraud, estoppel, and fiduciary-duty were paramount, and a contract claim was not the primary basis for the action, the trial court properly refused to award attorney fees to the prevailing party pursuant to this section. *Gibbs v. Bumgarner*, 2012 Ark. App. 81, — S.W.3d — (2012).

In an action to enforce an oral contract for services performed by a consulting company for an investment company, the trial court did not abuse its discretion by denying the consulting company attorney's fees under this section as the prevailing party because the investment company's defense was taken in good faith. *Steve's Outdoor Invs., LLC v. Reynolds Forestry Consulting-RFC, Inc.*, 2013 Ark. App. 40, — S.W.3d — (2013).

Not Requested.

Although appellants claimed the trial court erred in not awarding them attorney fees under this section, the court could not discern that they filed a motion or otherwise requested such fees, there was no specific prayer for such in the complaint, and the trial court did not rule on the issue; a party could not complain on appeal about the trial court not granting a particular kind of relief when it was not requested. *Grisanti v. Zanone*, 2009 Ark. App. 545, 336 S.W.3d 886 (2009).

Prevailing Party.

The court properly ruled that its award of attorney's fees could be recovered only from an estate's personal representative and not from the estate where three of the four of the cases were dismissed or nonsuited and, therefore, there was no prevailing party in those three cases. *Boatmen's Trust Co. v. Buchbinder*, 343 Ark. 1, 32 S.W.3d 466 (2000).

One must prevail on the merits in order to be considered a prevailing party; a dismissal without prejudice does not sufficiently conclude the matter such that a determination of the prevailing party can be stated with certainty. *Burnette v. Perkins & Assocs.*, 343 Ark. 237, 33 S.W.3d 145 (2000).

The plaintiff landlord was the prevailing party where, after setting off an award to the defendants, it was awarded a judgment of \$8,500 on its tort claim and \$2,000 on its contract claim; the fact that the landlord did not recover all of the

damages it sought was not determinative of whether it prevailed at trial. *Marcum v. Wengert*, 70 Ark. App. 477, 20 S.W.3d 430 (2000), rev'd, 344 Ark. 153, 40 S.W.3d 230 (2001).

In a landlord/tenant dispute pertaining to a fraternity house, the trial court erred in determining that there was no prevailing party where the fraternity prevailed on its claim for conversion of property and breach of lease, the officers of the fraternity prevailed in defending third-party claims by the landlord, and where the landlord was entitled to only \$2,000, rather than the \$40,000 sought, for damages. *Marcum v. Wengert*, 344 Ark. 153, 40 S.W.3d 230 (2001).

Award of an attorney's fee to husband as the "prevailing party" in company's action to recover on a credit card was improper because the company was the prevailing party where judgment was rendered in its favor on its complaint for a money judgment regarding the credit card account; as husband was ordered to pay a money judgment that he did not appeal, the trial court erred in declaring husband to be the prevailing party for purposes of this section. *C & W Asset Acquisition, LLC v. Whittington*, 90 Ark. App. 213, 205 S.W.3d 157 (2005).

Appellate court affirmed trial court's order denying attorney fees to a firm as the fact that the firm prevailed on the forum selection clause issue did not mean that it was the prevailing party as to the substantive issues, and the former partner's involuntary dismissal of the case without prejudice did not cause the firm to be the prevailing party where the substantive issues remained. *BKD, LLP v. Yates*, 367 Ark. 391, 240 S.W.3d 588 (Oct. 5, 2006).

Sixty-five thousand dollar attorney's fee award in a breach of contract case was upheld on review because the assertion of an unsuccessful counterclaim did not mean that a health organization was not the prevailing party where it successfully defended against doctor's contract claim; moreover, the amount was reasonable considering the legal expenses incurred. *Perry v. Baptist Health*, 368 Ark. 114, 243 S.W.3d 310 (2006).

When a corporation sought a retainage from a contractor, but the contractor refused to return the money because of alleged deficiencies in the corporation's

work, the circuit court properly awarded attorney's fees to the contractor because the contractor was the prevailing party, as it had received three-fourths of the money at issue. *CJ Bldg. Corp. v. TRAC-10*, 368 Ark. 654, 249 S.W.3d 793 (2007).

An award of attorney's fees to the landowners as the prevailing party under this section in a lease dispute, was affirmed although the judgment was reversed on appeal because a farm did not preserve its prevailing party argument made on appeal of a denial of a motion to vacate the award under Ark. R. Civ. P. 60(a). *Seidenstricker Farms v. Doss*, 374 Ark. 123, 286 S.W.3d 142 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 613 (Sept. 4, 2008).

Because the physician prevailed on two of the three issues he raised against the doctor and the professional association he, therefore, came out "on top" at the end of the case for purposes of this section. Further, the district court awarded the physician \$12,000 in attorney's fees for successfully defending against the breach of contract counterclaim and did not abuse its discretion in so doing. *Baptist Health v. Smith*, 536 F.3d 869 (8th Cir. 2008).

Trial court erred in a breach of contract action in holding that a buyer was not entitled to attorney fees after judgment was rendered in its favor because the language of the purchase agreement did not indicate that the parties intended that each party would pay its own attorney fees and costs in the event of litigation. *Asbury Auto. Used Car Ctr. v. Brosh*, 2009 Ark. 111, 314 S.W.3d 275 (2009).

Sellers who asserted a successful breach-of-contract claim against a buyer who moved into a home without paying the balance due were the prevailing party entitled to attorney's fees because even though the buyer prevailed on some warranty claims for unfinished household repairs, the sellers came out on top in the end. *Carroll v. UV Props., LLC*, 2009 Ark. App. 599, — S.W.3d — (2009).

In an action by home buyers against the sellers for recovery of the earnest money, in which the sellers asserted a counterclaim for damages for breach of contract, which resulted in a decision that the sellers were not entitled to damages but were entitled to keep the earnest money, neither party was the prevailing party for purposes of awarding attorney's fees un-

der this section or the terms of the parties' real estate contract, or for costs under Ark. R. Civ. P. 54(d)(2). *Brackelsberg v. Heflin*, 2011 Ark. App. 678, 386 S.W.3d 636 (2011).

Trial court did not err in awarding attorney fees to the purchaser of an accounting office in a breach of contract action because the purchaser was the prevailing party; while the trial court dismissed the purchaser's claims for fraud, reimbursement of the purchase money for the building, and tortious interference, it awarded the purchaser all of the purchaser's requested fees. *Spann v. Lovett & Co.*, 2012 Ark. App. 107, 389 S.W.3d 77 (2012).

Circuit court did not abuse its discretion in finding that the client was the prevailing party where she successfully defended the breach-of-contract claim; the court limited the fee award and a successful defendant in a contract action could be considered a "prevailing party" for the purposes of this section. *Harrill & Sutter P.L.L.C. v. Kosin*, 2012 Ark. 385, — S.W.3d — (2012).

While appellants were granted summary judgment on individual claims against them, appellee recovered a judgment against appellants' company, and thus appellee was a prevailing party in terms of the entirety of the case; thus, the trial court did not err in denying appellants' motion for attorney fees. *Armstrong Remodeling & Constr., LLC v. Cardenas*, 2012 Ark. App. 387, — S.W.3d — (2012).

Because the only issue remaining for trial was whether the rail service should be liable for the employer's share of a settlement amount, and at trial the district court determined that the rail service was not liable for any additional amount, the district court did not err when it found that the employer was not a prevailing party under this section. *Rice v. Union Pac. R.R. Co.*, 712 F.3d 1214 (8th Cir. 2013).

Rescission.

Remedy of rescission in a contract case does not foreclose this section's authorization for attorney's fees in a breach-of-contract case. Where a trial court's order and its oral findings indicate that a case sounded primarily in contract, rather than in tort, and the trial court was misled by dicta in case law, a remand was necessary for the reconsideration of a mo-

tion for fees. *Beck v. Inter City Transp., Inc.*, 2012 Ark. App. 370, — S.W.3d — (2012).

Reversal of Judgment.

Assignee of trucking companies stood in the companies' position and was subject to any defenses a transportation company had against the companies, including fraud, and the trial court erred in finding otherwise; in addition, because the assignee was no longer a prevailing party, the appellate court also reversed the award of attorney fees under this section. *Am. Transp. Corp. v. Exch. Capital Corp.*, 84 Ark. App. 28, 129 S.W.3d 312 (2003).

Where litigants failed in an action on a trust and the trial court dismissed their cross-claims for waste, bad faith, and breach of fiduciary duty, and rejected their arguments regarding the interpretation of the trust instrument, the trial court erred in awarding them conditional attorney's fees. *Bailey v. Delta Trust & Bank*, 359 Ark. 424, 198 S.W.3d 506 (2004).

School district was not required under this section to pay a county an attorney's fee because an order directing the district to reimburse the county for overtime pay provided by the county to the county clerk for work related to a school district election was reversed. *Helena-West Helena Sch. Dist. v. Fluker*, 371 Ark. 574, 268 S.W.3d 879 (2007).

Summary Judgment.

In a subcontractor's fraudulent inducement suit against a contract, a trial court did not abuse its discretion in awarding the contractor \$40,000 in attorney's fees under this section, although the contractor prevailed on summary judgment, given the volume of discovery that was necessary before the contractor could determine that the subcontractor had violated § 17-25-103, defeating the subcontractor's claims. *Meyer v. CDI Contrs., LLC*, 102 Ark. App. 290, 284 S.W.3d 530 (2008).

Time Limitations.

District court's verdict was reversed on appeal where the applicable statute of limitations began to run at the latest date the plaintiff lessor learned its land had suffered a remediable injury, though it did not yet know the extent of the injury; thus, the award of attorney's fees was reversed and remanded for further consid-

eration. *Highland Indus. Park, Inc. v. BEI Def. Sys. Co.*, 357 F.3d 794 (8th Cir. 2004).

Trial court did not err in denying terminated county employee's motion for an award of attorney's fees as her motion seeking attorney's fees was not timely filed; the same result held true even if the time was measured from the denial of the county's motion for JNOV because the fee motion was filed 21 days after the order denying the motion was entered. *Crawford County v. Jones*, 365 Ark. 585, 232 S.W.3d 433 (2006).

Tort Action.

Where both contract and tort claims are advanced, an award of attorney's fees to the prevailing party is proper only when the action is based primarily in contract. *Marcum v. Wengert*, 70 Ark. App. 477, 20 S.W.3d 430 (2000), rev'd, 344 Ark. 153, 40 S.W.3d 230 (2001).

Trial court did not abuse its discretion in refusing to award attorney's fees in a conversion action. *Brown v. Blake*, 86 Ark. App. 107, 161 S.W.3d 298 (2004).

Attorney fees should not have been awarded under this section because the action was not primarily based in contract; the case sounded primarily in tort because, in order for a cause of action for legal malpractice to be maintained, the contractual relationship requirement in § 16-22-310 had to be met. The core dispute was whether there was an oral contract to make a claim against an attorney and his legal-malpractice carrier. *Howard*

v. Adams, 2012 Ark. App. 562, — S.W.3d — (2012).

Cited: *State Auto Property & Cas. Ins. Co. v. Swaim*, 338 Ark. 49, 991 S.W.2d 555 (1999); *Bharodia v. Pledger*, 66 Ark. App. 349, 990 S.W.2d 581 (1999); *Dawson v. Temps Plus, Inc.*, 337 Ark. 247, 987 S.W.2d 722 (1999); *Bendinger v. Marshalltown Trowell Co.*, 338 Ark. 410, 994 S.W.2d 468 (1999); *Stilley v. James*, 347 Ark. 74, 60 S.W.3d 410 (2001); *Shelter Mut. Ins. Co. v. Kennedy*, 347 Ark. 184, 60 S.W.3d 458 (2001); *GMAC v. Union Bank & Trust Co.*, 329 F.3d 594 (8th Cir. 2003); *BAAN, United States v. USA Truck, Inc.*, 82 Ark. App. 202, 105 S.W.3d 784 (2003); *Hickman v. Kralicek Realty & Constr. Co.*, 84 Ark. App. 61, 129 S.W.3d 317 (2003); *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005); *Taylor v. George*, 92 Ark. App. 264, 212 S.W.3d 17 (2005); *Sluyter v. Hale Fireworks P'ship*, 370 Ark. 511, 262 S.W.3d 154 (2007); *Helena-West Helena Sch. Dist. v. Fluker*, 371 Ark. 574, 268 S.W.3d 879 (2007); *Medical Liab. Mut. Ins. Co. v. Alan Curtis Enters.*, 373 Ark. 525, 285 S.W.3d 233 (2008); *Hearne v. Banks*, 2009 Ark. App. 590, 376 S.W.3d 444 (2009); *Booth v. Riverside Marine Remanufacturers*, 2010 Ark. App. 366, — S.W.3d — (2010); *Bonds v. Hunt*, 2010 Ark. App. 415, 379 S.W.3d 57 (2010); *Dunn v. Womack*, 2011 Ark. App. 393, 383 S.W.3d 893 (2011); *Worley v. City of Jonesboro*, 2011 Ark. App. 594, 385 S.W.3d 908 (2011).

16-22-309. Attorney's fees in actions lacking justiciable issue.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual
Survey of Case Law: Contract Law, 29 U.
Ark. Little Rock L. Rev. 845.

CASE NOTES

ANALYSIS

Fees.
Justiciable Issue.
Review.

Fees.

Trial court did not err by denying a

telecommunications company's motion for attorney's fees following the trial court's denial of a city's declaratory judgment action against the company because the trial court never made a finding of a complete absence of a justiciable issue, and the appellate court could not find that the city acted in bad faith by bringing the

action. *City of Fort Smith v. Didicom Towers, Inc.*, 362 Ark. 469, 209 S.W.3d 344 (2005).

Although appellant did not prevail, his claim was supported, and thus the court could not find that there was a complete absence of a justiciable issue and the trial court erred in ordering the payment of fees. *Laster v. Williams*, 2012 Ark. App. 282, — S.W.3d — (2012).

Justiciable Issue.

Court properly dismissed student's petition for a writ of mandamus requesting the court to enjoin school officials to reinstate his cancelled test scores in a voluntary reading program after he was accused of cheating as the court knew of no law to compel the school officials to reinstate the student's scores in a voluntary reading program; further, an award of attorneys' fees to appellees under this section was proper because no justiciable issue was raised. *T.J. v. Hargrove*, 362 Ark. 649, 210 S.W.3d 79 (2005).

Circuit court did not err in denying attorney fees because there was not a complete absence of justiciable issues; the applicability of § 17-42-107(b), regarding capacity to sue for real estate commissions, had not, until the instant appeal, been interpreted by Arkansas' courts and, further, the language of the statute was sufficiently unclear that a party or his attorney would be justified in making an argument regarding its meaning. *Keahey*

v. Plumlee, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

Trial court erred in awarding attorney's fees against a neighboring land owner, who had asserted a claim for an easement by prescription, because there was no bad faith shown. The neighboring land owner presented a valid claim, and offered some evidence that he used the roadway over the course of years. *Drummond v. Shepherd*, 97 Ark. App. 244, 247 S.W.3d 526 (2007).

There was no evidence in the record, other than the neighbor's bare, unfounded assertion, that the boundary line established and confirmed by all of the surveys was not in fact the boundary line, and there was a complete absence of a justiciable issue on the neighbor's part in his defense; pursuant to § 16-22-309, the landowners were entitled to attorney's fees. *Adams v. Atkins*, 97 Ark. App. 328, 249 S.W.3d 166 (2007).

Review.

Claim that an attorney was entitled to fees under subdivision (a)(1) of this section for the filing of an allegedly nonjusticiable claim was not heard on review because the circuit court made no ruling on the issue. *Morgan v. Chandler*, 367 Ark. 430, 241 S.W.3d 224 (2006).

Cited: *Jones v. Abraham*, 341 Ark. 66, 15 S.W.3d 310 (2000); *Jones v. Abraham*, 67 Ark. App. 304, 999 S.W.2d 698 (1999); *Stilley v. Hubbs*, 344 Ark. 1, 40 S.W.3d 209 (2001).

16-22-310. Liability for civil damages.

(a) No person licensed to practice law in Arkansas and no partnership or corporation of Arkansas licensed attorneys or any of its employees, partners, members, officers, or shareholders shall be liable to persons not in privity of contract with the person, partnership, or corporation for civil damages resulting from acts, omissions, decisions, or other conduct in connection with professional services performed by the person, partnership, or corporation, except for:

(1) Acts, omissions, decisions, or conduct that constitutes fraud or intentional misrepresentations; or

(2)(A) Other acts, omissions, decisions, or conduct if the person, partnership, or corporation was aware that a primary intent of the client was for the professional services to benefit or influence the particular person bringing the action.

(B) For the purposes of subdivision (a)(2)(A) of this section, if the person, partnership, or corporation identifies in writing to the client those persons who are intended to rely on the services and sends a

copy of the writing or similar statement to those persons identified in the writing or statement, then the person, partnership, or corporation or any of its employees, partners, members, officers, or shareholders may be held liable only to the persons intended to so rely, in addition to those persons in privity of contract with the person, partnership, or corporation.

(b) This section shall apply only to acts, omissions, decisions, or other conduct in connection with professional services occurring or rendered on or after April 6, 1987.

(c) The appointment of an attorney as a successor trustee or attorney-in-fact as provided in § 18-50-101 et seq. shall not expand the liability of the attorney, the entity, or partnership employing the attorney, or the firm in which the attorney is a member or partner beyond the liability provided in this section.

History. Acts 1987, No. 661, §§ 2, 3; 2005, No. 1883, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Legal Malpractice: The Law in Arkansas and Ways to Avoid Its Reach, 55 Ark. L. Rev. 267.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Tort Law, 24 U. Ark. Little Rock L. Rev. 1085.

Annual Survey of Case Law: Practice, Procedure, and Courts, 29 U. Ark. Little Rock L. Rev. 905.

CASE NOTES

ANALYSIS

Applicability.
Construction.
Attorney Fees.
Employees.
Exceptions.
Fraud.
Relation to Other Remedies.
Respondeat Superior.
Standing.

Applicability.

Where wife's attorney in divorce suit negotiated the terms of a general settlement with the husband's attorney and the wife subsequently refused to accept the settlement agreement, the husband could not seek to hold the wife's attorney liable to him under a claim of breach of an implied promise; the wife's attorney was not in privity of contract with the husband and there were no allegations of fraud or misrepresentation by the wife's attorney. *Nielsen v. Berger-Nielsen*, 347 Ark. 996, 69 S.W.3d 414 (2002).

Because this section did not bar client's claim of professional negligence against the lawyer and a material fact remained as to whether the client was in privity with the lawyer, and a material fact remained as to whether there was an employer-employee relationship between the lawyer and the firm at the time of the lawyer's alleged negligence, the trial court erred in granting summary judgment for the lawyer and the law firm. *Jackson v. Ivory*, 353 Ark. 847, 120 S.W.3d 587 (2003).

Because insurers were not in direct privity with attorneys who allegedly provided inadequate representation to an insured, and a valuation sent to one insurer did not indicate that the insurer was a party intended to rely on the valuation, this section precluded the insurers from suing the attorneys for legal malpractice. *Great American Ins. Co. v. Dover*, 456 F.3d 909 (8th Cir. 2006).

In a negligence action, the real question was whether the property appraiser owed

any legal duty to the plaintiff property owners, and the plaintiffs' reliance on §§ 4-86-101, 16-114-303, and 16-22-310 to support their proposition that privity of contract with an appraiser was not a requirement in their negligence suit was misplaced. *Marlar v. Daniel*, 368 Ark. 505, 247 S.W.3d 473 (2007).

Where heirs had filed an action against lawyers alleging negligence related to a will executed by their deceased relative, the lawyers were entitled to summary judgment because none of the heirs had ever had a lawyer-client relationship with the lawyers. Under this section, the lawyers were protected from such actions filed by persons with whom they were not in privity. *Yearly v. Baptist Health Found.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 1376 (E.D. Ark. Jan. 7, 2008).

Dismissal was proper in an action by debtors against a law firm acting as a debt collector because the firm was immune from claims of abuse of process, civil conspiracy, constructive fraud, and negligence under this section. *Born v. Hosto & Buchan, PLLC*, 2010 Ark. 292, — S.W.3d — (2010).

Bond counsel was not liable to the banks for malpractice for failing to indicate in the disclosure documents prepared for the bond underwriter that there was a prior lien on the real property pledged as security for the bonds because the banks did not have direct privity of contract or any attorney-client relationship with counsel. *First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A.*, 2013 Ark. 159, — S.W.3d — (2013).

Construction.

Trial court properly concluded that the lawyer placed a lien on land in which he believed the landowner held an interest and that the acts were the lawful actions of an attorney representing his client; therefore, the lawyer was immune under this section and § 16-114-303 from the landowner's slander of title lawsuit. *Fleming v. Cox*, 363 Ark. 17, 210 S.W.3d 866 (2005).

Attorney Fees.

Attorney fees should not have been awarded under § 16-22-308 because the action was not primarily based in contract; the case sounded primarily in tort because, in order for a cause of action for

legal malpractice to be maintained, the contractual relationship requirement in this section had to be met. The core dispute was whether there was an oral contract to make a claim against an attorney and his legal-malpractice carrier. *Howard v. Adams*, 2012 Ark. App. 562, — S.W.3d — (2012).

Employees.

Employer attorney was not entitled to the immunity protection of this section for her own negligence in not adequately supervising her employee, another attorney, who was suspected of dishonest conduct in his transaction with clients who were not in privity of contract with the employer attorney, as the employer attorney's negligence was not related to the performance of professional services as required under the statute, but instead involved her supervision of his conduct as his employer. *Madden v. Aldrich*, 346 Ark. 405, 58 S.W.3d 342 (2001).

Exceptions.

Exception in subdivision (a)(2) did not apply in the case of trustees who brought a legal malpractice action against a lawyer and others; the lawyer was aware that the purpose of the lawyer's relationship with the trustees as individuals was to benefit the trusts, and the trustees did not present any specific evidence that showed that the statutory requirements had been met. *Giles v. Harrington, Miller, Neihouse & Krug*, 362 Ark. 338, 208 S.W.3d 197 (2005).

Second exception to the general rule of privity in § 16-22-310(a)(2) on which trusts relied in their legal malpractice claims against attorneys was inapplicable because the trusts had no potential action against one attorney due to lack of the statutorily required privity of contract with him, and the trusts' claims that an attorney's acts during the second period of representation affected the 1999 claim regarding a sale of the family farm failed. While it was undisputed that counsel during the first period of representation was aware that the purpose of his relationship with the individuals was to benefit the trusts, the trusts did not present any specific evidence, such as specific documents or correspondence, that showed that the statutory requirements as to sending correspondence had been met.

Giles v. Harrington, Miller, Neihouse & Krug, 362 Ark. 338, 208 S.W.3d 197 (2005).

Bond counsel could not be liable to the banks under subdivision (a)(2) of this section for failing to indicate in the disclosure documents prepared for the bond underwriter that there was a prior lien on the real property pledged as security for the bonds because there was no writing by which counsel identified the banks as persons counsel's services were intended to benefit or influence. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

Fraud.

Pursuant to §§ 16-22-310(a)(1) (1999) and 16-114-303, an attorney and law firm were immune from a couple's slander of title claim where there was no privity between the parties, there were no factual assertions of fraud, and it appeared that a lis pendens action to enforce a child arrearage judgment obtained by the husband's ex-wife was simply filed in error. Fleming v. Cox, 363 Ark. 17, 210 S.W.3d 866 (2005).

Bond counsel was not entitled to summary judgment on the claim that he committed malpractice by failing to indicate in the disclosure documents prepared for the bond underwriter that there was a prior lien on the real property pledged as security for the bonds because there remained genuine issues of material fact on whether the existence of the prior lien was a material item of information that should have been disclosed by bond counsel, whether the failure to disclose was an intentional omission, and whether the failure to disclose was done with the intent to defraud bond purchasers as a means to secure the fees bond counsel expected to realize from the bond transaction. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

Relation to Other Remedies.

Where Ark. Code Ann. § 16-22-310 precluded insurers from filing a legal malpractice claim against attorneys who allegedly provided inadequate representation for an insured, the insurers also could not recover from the attorneys under a theory of equitable subroga-

tion; allowing the insurers to proceed under that alternative theory would contravene Ark. Code Ann. § 16-22-310, which enunciates the parameters for litigation by clients against attorneys. Great American Ins. Co. v. Dover, 456 F.3d 909 (8th Cir. 2006).

Respondent Superior.

Client's respondent superior claims against the law firm were not barred by this section due to lack of privity between the client and the lawyer who worked for the law firm. Jackson v. Ivory, 353 Ark. 847, 120 S.W.3d 587 (2003).

Standing.

A plaintiff in a legal malpractice action must be in direct privity with the attorney or entity being sued for legal malpractice; thus, the children of a decedent could not bring a legal malpractice action against the attorney who drafted the decedent's will either under a theory of indirect privity or as third-party beneficiaries of the contract for legal representation. McDonald v. Pettus, 337 Ark. 265, 988 S.W.2d 9 (1999).

The children of a decedent did not have standing to bring a legal malpractice action against the attorney who drafted the decedent's will under the exception contained in subdivision (a)(2) of this section, as there was no evidence that the attorney ever sent a copy of the will to the children. McDonald v. Pettus, 337 Ark. 265, 988 S.W.2d 9 (1999).

A decedent's personal representatives did not have standing to bring a legal malpractice action against the attorney who drafted the decedent's will as there was direct privity between the decedent and the attorney. McDonald v. Pettus, 337 Ark. 265, 988 S.W.2d 9 (1999).

Although the law firm, lawyer's estate, and attorneys were in privity of contract with the individuals who created the trusts and became trustees, the existence of privity for the claims against the attorneys did not stand on its own because the actual claims of legal malpractice occurred during the lawyer's representation when the trustees had no privity with the firm; thus, the trustees were without standing to bring their legal malpractice suit and the trial court was without jurisdiction to hear the case. Giles v. Harrington, Miller, Neihouse & Krug, 362 Ark. 338, 208 S.W.3d 197 (2005).

Trustees lacked standing to file legal malpractice claims against appellees, attorneys, and a law firm, because appellees provided legal services for the sale of a family farm to the trustees in their individual capacities, and not to the trusts of which the individuals were trustees. Although the parties were, in fact, the same individuals, they were different legal entities from the trusts; thus privity for the individuals did not necessarily equate to privity for the trusts, and the trustees had no privity of contract with appellees as required by § 16-22-310(a). *Giles v. Harrington, Miller, Neihouse & Krug*, 362 Ark. 338, 208 S.W.3d 197 (2005).

Where a decedent, prior to his death, and his wife retained the services of a lawyer to set up a revocable trust for the benefit of the decedent's son, where the decedent became incapacitated before executing deeds to transfer his assets to the trust, where the lawyer consulted with the decedent's son and wife and petitioned

to have the son appointed guardian so that he could execute the deeds, where the lawyer did not disclose that, if the son did not sign the deed, he would inherit by intestate succession but that, if he executed the deeds, his stepmother would gain control and could divest him of the assets, and where the stepmother did just that after the decedent succumbed, the trial court erred in granting summary judgment of attorneys hired to pursue a legal malpractice claim against the lawyer and in holding that no valid claim existed because the son lacked privity of contract with his father's lawyer. Summary judgment was improper because the evidence revealed conflicting accounts of the son's contractual relationship with the lawyer and gave rise to the implication that the lawyer had a duty to advise the son of his inheritance rights and the possibility that his stepmother could cut him out of the trust. *Howard v. Adams*, 2009 Ark. App. 621, 332 S.W.3d 24 (2009).

16-22-311. Reports of visits with incarcerated indigent clients.

(a)(1) An attorney at law representing an indigent client who is incarcerated in any county jail, city jail, juvenile detention facility, or other facility operated by the Division of Youth Services of the Department of Human Services in the State of Arkansas shall make a report of personal visits with the client.

(2) The report shall be on a sign-in document to be provided by the correctional facility or criminal detention facility in which the client is incarcerated.

(3) The sign-in document shall be designed in order to allow the attorney to record:

- (A) The date of the visit;
- (B) The time the attorney is signing in for the visit;
- (C) The name of the inmate visited; and
- (D) The time the attorney is signing out after the visit.

(b)(1) Each county jail, city jail, juvenile detention facility, or other detention facility operated by the division shall furnish a sign-in document for attorneys required to make a report under this section.

(2) The facilities shall maintain the reports for a period of one (1) year following the release, discharge, or transfer of an inmate represented by an attorney who is required to make a report under this section.

History. Acts 2005, No. 1279, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

SUBCHAPTER 5 — UNAUTHORIZED PRACTICE OF LAW**16-22-501. Prohibited activities.****RESEARCH REFERENCES**

ALR. Unauthorized practice of law — Real estate closings. 119 A.L.R.5th 191.
Matters Constituting Unauthorized Practice of Law in Bankruptcy Proceedings. 32 A.L.R.6th 531.

CASE NOTES**Disciplinary Proceedings.**

Where an attorney, after his license was temporarily suspended due to his felony conviction for DWI, held himself out as a landlord's attorney, advised the landlord's tenant that the tenant had to vacate leased premises, and represented the landlord at a city council meeting concerning a condemnation matter, the attorney was disbarred pursuant to Ark. Sup. Ct. Prof. Conduct P. § 13(D) because the spe-

cial judge did not clearly err in concluding (1) that the DWI conviction constituted a serious crime under Ark. Sup. Ct. Prof. Conduct P. § 2(J); (2) that the attorney violated Ark. R. Prof. Conduct 8.4(b); and (3) that the attorney's DWI conviction and unauthorized practice of law in violation of § 16-22-501(a)(2) constituted serious misconduct under Ark. Sup. Ct. Prof. Conduct P. § 17(B). *Ligon v. Stewart*, 369 Ark. 380, 255 S.W.3d 435 (2007).

CHAPTER 23**LAW LIBRARIES****SECTION.**

16-23-102. County law library boards.

16-23-102. County law library boards.

(a)(1) A county law library established pursuant to this chapter shall be under the control of a county law library board of not less than three (3) nor more than five (5) persons, who shall be practicing attorneys residing in the county and who shall be appointed by the county court from attorneys nominated by the county bar association or, in counties where there is no county bar association, by a regional bar association which includes that county.

(2) In any county in which there are fewer than three (3) practicing attorneys, the board shall be composed of not less than three (3) nor more than five (5) persons, including the practicing attorney or attorneys in the county together with one (1) or more additional persons who are legal residents and qualified electors of the county, appointed by the county court.

(b) Members of the board shall be appointed for a term of five (5) years, but the initial appointments shall be so arranged that the terms of each member initially appointed expire in succeeding years.

(c)(1) The board shall have charge of the operation and maintenance of the county law library and the custody and care of the county law library's property. The board shall direct the expenditure of funds derived for county law library purposes under this chapter, and any other funds received by the county, or the board, for the use of the county law library.

(2) Any excess funds in the county law library book fund not needed for the operation and maintenance of the county law library may be expended by the board for any other purpose necessary for improvement in the administration of justice in the county.

(3)(A) The board may dispose of any personal property of the library it determines is junk, scrap, discarded, or otherwise of no value to the library.

(B) The board may dispose of the personal property under subdivision (c)(3)(A) of this section by methods that include without limitation private sale, public sale, gift, or destruction.

(d)(1) The board, subject to approval of the county court, is authorized, in implementation of the purposes of this chapter, to enter into agreements with any person, including other public bodies, in this state pertaining to the operation and maintenance of a county law library.

(2) Without limiting the generality of the foregoing, agreements entered into pursuant to the provisions hereof may contain provisions:

(A) Making available to any institution of higher learning the county law library, and related facilities, and the books, volumes, treatises, pamphlets, and other educational materials located therein;

(B) Authorizing the institution to maintain, locate, and relocate in the county law library, select, replace, supervise the use of, buy, sell, lend, borrow, receive bequests and donations of, and otherwise deal in and contract concerning, such books, volumes, treatises, pamphlets, and other educational materials; and

(C) Providing for the operation, maintenance, and supervision of the county law library and related facilities for the benefit of the institution, the county, judges and attorneys, and the public.

(3) The agreements may make available to the institution all or a portion of the collections of the costs levied pursuant to the provisions of this chapter, for the purpose of performing the obligations of the institution thereunder.

History. Acts 1971, No. 284, §§ 4, 5; 1977, No. 89, § 1; 1983, No. 652, § 1; A.S.A. 1947, §§ 25-507, 25-508; Acts 2013, No. 43, § 1.

Amendments. The 2013 amendment,

in (c)(1), substituted "the county law library's" for "its" in the first sentence, and "The board" for "It" and "county law" for "law" in the second sentence; and added (c)(3).

CHAPTER 24

COURT BAILIFFS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

16-24-101. Oaths for court bailiffs.

16-24-101. Oaths for court bailiffs.

(a) The following oath, in substance, shall be administered to a court bailiff at the start of a jury trial:

“I do solemnly swear (or affirm) that I will faithfully, impartially, and to the best of my ability, discharge the duties of bailiff of this court, to which office I have been appointed, and strictly obey all orders of the court, as bailiff during the present session now being held.”

(b) The following oath, in substance, shall be administered to a court bailiff prior to the deliberation of a jury:

“I do solemnly swear (or affirm) that I will keep this jury together, not allowing any person to speak to them or overhear their deliberations, nor to speak to them myself, unless it is in the performance of my official duties as bailiff to this court.”

History. Acts 2007, No. 227, § 1.

SUBTITLE 3. JURIES AND JURORS

CHAPTER 30

GENERAL PROVISIONS

16-30-102. Alternate jurors.

CASE NOTES

Cited: Buckley v. State, 341 Ark. 864,
20 S.W.3d 331 (2000).

CHAPTER 31

JUROR QUALIFICATIONS AND EXEMPTIONS

SECTION.

16-31-101. Qualifications.

16-31-102. Disqualifications.

SECTION.

16-31-104. Limitations on frequency and period of service.

Effective Dates. Acts 2005, No. 87, § 12: Feb. 8, 2005. Emergency Clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the present method of selecting grand jurors and petit jurors is inadequate to permit computerized random selection; that this act will provide for the computerized random selection of jurors; and that until this act becomes effective, the validity of findings and judgments issued by juries selected randomly by com-

puter is subject to question. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-31-101. Qualifications.

Every registered voter or, in counties where an enhanced prospective jury list is utilized, every registered voter, licensed driver, or person issued an identification card under § 27-16-805 who is a citizen of the United States and a resident of the State of Arkansas and of the county in which he or she may be summoned for jury service is legally qualified to act as a grand or petit juror if not otherwise disqualified under the express provisions of this act.

History. Acts 1969, No. 568, § 1; A.S.A. 1947, § 39-101; Acts 2003, No. 1404, § 6[5].

A.C.R.C. Notes. Acts 2003, No. 1404, did not contain a Section 4.

RESEARCH REFERENCES

ALR. Prejudicial effect of juror's inability to comprehend English. 117 A.L.R.5th 1.

16-31-102. Disqualifications.

(a) The following persons are disqualified to act as grand or petit jurors:

- (1) Persons who do not meet the qualifications of § 16-31-101;
- (2) Persons who are unable to speak or understand the English language;
- (3) Persons who are unable to read or write the English language, except that the circuit judge, in the exercise of his discretion, may waive these requirements when the persons are otherwise found to be capable of performing the duties of jurors;
- (4) Persons who have been convicted of a felony and have not been pardoned;
- (5) Persons who are:
 - (A) Not of good character or approved integrity;
 - (B) Lacking in sound judgment or reasonable information;
 - (C) Intemperate; or
 - (D) Not of good behavior;

(6) Persons who, by reason of a physical or mental disability, are unable to render satisfactory jury service, except that no person shall be disqualified solely on the basis of loss of hearing or sight in any degree; and

(7) Persons who are less than eighteen (18) years of age at the time they are required to appear.

(b) Except by the consent of all the parties, no person shall serve as a petit juror in any case who:

(1) Is related to any party or attorney in the cause within the fourth degree of consanguinity or affinity;

(2) Is expected to appear as a witness or has been summoned to appear as a witness in the cause;,

(3) Has formed or expressed an opinion concerning the matter in controversy which may influence his judgment;

(4) May have a material interest in the outcome of the case;

(5) Is biased or prejudiced for or against any party to the cause or is prevented by any relationship or circumstance from acting impartially; or

(6) Was a petit juror in a former trial of the cause or of another case involving any of the same questions of fact.

(c) Nothing in this section shall limit a court's discretion and obligation to strike jurors for cause for any reason other than solely because of sight or hearing impairment.

History. Acts 1969, No. 568, §§ 2, 5; (1st Ex. Sess.), No. 4, § 1; 2005, No. 87, A.S.A. 1947, §§ 39-102, 39-105; Acts 1994 § 1.

RESEARCH REFERENCES

ALR. Prejudicial effect of juror's inability to comprehend English. 117 A.L.R.5th 1.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

CASE NOTES

ANALYSIS

Bias.
Opinion.

Bias.

Denial of a motion for a new trial filed by injured parties and estate administrators (appellants) in their action against a motor company after a van rolled over and killed and injured 11 persons was appropriate because appellants failed to demonstrate that four jurors should have been stricken for cause given the questions as to whether appellants had challenged the jurors for cause; the jurors' indication that they would not impose a greater burden of

proof on appellants, under subsection (b) of this section; and the fact that any potential bias was cured by the circuit court's inquiries and instructions. *Herrington v. Ford Motor Co.*, 2010 Ark. App. 407, 376 S.W.3d 476 (2010).

Opinion.

In a rape prosecution where the victim was a police officer, the fact that the prosecutor asked the jurors during voir dire to agree that a combat trained person could be raped with minimal force did not violate subdivision (b)(3) of this section, as the jurors were not asked to agree that rape could occur without force, but the questions were directed to the amount of

force necessary. *McElroy v. State*, 2011 Ark. App. 533, 385 S.W.3d 406 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 687 (Ark. Ct. App. Oct. 26, 2011).

Cited: *Hughes v. State*, 98 Ark. App. 375, 255 S.W.3d 891 (2007).

16-31-104. Limitations on frequency and period of service.

(a) Any person who is sworn as a member of a grand or petit jury shall be ineligible to serve on another grand or petit jury in the same county for a period of two (2) years from the date the person is excused from further jury service by the court or by operation of law.

(b) No petit juror shall be required to report for jury duty on more than ten (10) days or for more than a four-month period during the calendar year for which he or she is selected, except that any juror actually engaged in the trial of a case at the time of the expiration of the period of permitted service shall serve until the trial of the case is concluded.

(c) A summons to serve on jury duty shall include a description of the maximum periods of service under this section.

History. Acts 1969, No. 568, §§ 3, 4; A.S.A. 1947, §§ 39-103, 39-104; Acts 2007, 1971, No. 364, § 1; 1983, No. 425, § 1; No. 225, § 1.

CHAPTER 32

SELECTION AND ATTENDANCE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. CRIMINAL PROCEEDINGS.
3. ENHANCED PROSPECTIVE JUROR POOL.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 16-32-102. [Repealed.]
 16-32-103. Master list.
 16-32-104. Jury wheel or box.
 16-32-105. Drawing for petit jurors.

SECTION.

- 16-32-106. Summons of petit jurors.
 16-32-108. Additional jurors.
 16-32-111. Confidentiality of juror information.

Effective Dates. Acts 2005, No. 87, § 12: Feb. 8, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the present method of selecting grand jurors and petit jurors is inadequate to permit computerized random selection; that this act will provide for the computerized random selection of jurors; and that until this act becomes effective, the validity of findings and judgments

issued by juries selected randomly by computer is subject to question. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden,
the date the last house overrides the veto.”

16-32-102. [Repealed.]

Publisher’s Notes. This section, concerning jury commissioners, was repealed by Acts 2013, No. 1148, § 6. The section was derived from Acts 1969, No. 568, §§ 10-12; 1975, No. 485, § 1; A.S.A. 1947, §§ 39-201.1 — 39-204.

16-32-103. Master list.

(a) During the month of November or December of each year, the prospective jurors for the following calendar year shall be selected from among the current list of registered voters of the applicable district or county in the following manner:

(1) The circuit judge, in the presence of the circuit clerk, shall select at random a number between one (1) and one hundred (100), inclusive, which shall be the starting number, and the circuit court shall then select the person whose name appears on the current voter registration list in that numerical position, counting sequentially from the first name on the list;

(2) The circuit clerk shall then select the one hundredth voter registrant appearing on the list after the starting number. As an example, if the starting number is sixty-seven (67), which is the first selection, the second selection would be the one hundred sixty-seventh registered voter, the third selection would be the two hundred sixty-seventh registered voter, and so forth until the current registered voter list is exhausted; and

(3) The circuit judge and the circuit clerk shall then repeat the random selection process until the number of jurors set out in this subsection have been selected.

(b) The number of persons to be selected shall be based upon the number of qualified registered voters in the appropriate district or county as reflected by the current list of registered voters provided by the county clerk under legal requirements and, unless a larger number is designated by the circuit judge, the minimum number selected shall be as follows:

Number of Registered Voters	Minimum Number of Prospective Petit Jurors	Minimum Number of Prospective Grand Jurors
90,000 or more	1,200	120
16,000 to 89,999	1,000	100
10,000 to 15,999	800	90
6,000 to 9,999	600	75
2,000 to 5,999	500	75

Number of Registered Voters	Minimum Number of Prospective Petit Jurors	Minimum Number of Prospective Grand Jurors
0 to 1,999	250 or 50% of the registered voters, whichever is smaller	

(c)(1) After the list of prospective jurors has been submitted by the circuit clerk, the circuit judge may, in the exercise of his or her discretion, authorize clerical assistance in preparing the alphabetized master list and separate cards, chips, disks, or other appropriate means of including the names and addresses of the prospective jurors in the wheel or box.

(2) The expense of this clerical help shall be paid by the county as an expense of the administration of justice.

(3) Clerical employees shall take the following oath:

“I will not make known to anyone the names of the prospective jurors who have been selected and I will not, directly or indirectly, converse with anyone selected as a juror concerning the merits of any proceeding pending or likely to come before the grand jury or court until after the case is tried or otherwise finally disposed of.”

(d) Subsections (a)-(c) of this section shall be applicable to all circuit courts and counties within the state that are not using a computerized random jury selection process.

(e)(1)(A) All circuit clerks who maintain on computers voter registration lists or the enhanced list of prospective jurors authorized by § 16-32-302, whether in-house or contracted, may utilize the computers and associated equipment for the purpose of selecting jury panels from the voter registration lists or the enhanced list of prospective jurors instead of compiling a master list under subsections (a)-(c) of this section if the computer program is capable of randomly selecting names for the jury panels from the voter registration lists or enhanced list of prospective jurors.

(B) If the computer program is not capable of randomly selecting names for the jury panels from the voter registration lists or enhanced list of prospective jurors, the clerks may use the computers and associated equipment for the purpose of creating the master list under subsections (a)-(c) of this section.

(2) The master list of jurors’ names and addresses shall not be available for public inspection, publication, or copying, but it may be examined in the presence of the circuit judge by litigants or their attorneys who desire to verify that names drawn from the wheel or box were placed there in the manner provided in this act by the commissioners.

(3)(A) In counties where jury selection is conducted by a computerized random process, the source list of potential jurors’ names and addresses shall not be available for public inspection, publication, or copying.

(B) The source list may be examined in the presence of the circuit judge by litigants or their attorneys who desire to verify that names randomly selected by computer were selected from the list.

History. Acts 1969, No. 568, § 15; A.S.A. 1947, §§ 39-205.1, 39-205.1n, 39-1975, No. 485, § 2; 1979, No. 816, §§ 1, 2; 205.2, 39-207; Acts 2005, No. 87, § 2. 1981, No. 687, § 1; 1985, No. 1066, § 1;

CASE NOTES

Discrimination.

Capital murder defendant's challenge to the use of voter-registration records to select the jury panel on the grounds that African-Americans and women would be under-represented was properly rejected;

where the venire was chosen using the random selection process required by this section, there was no possibility of a systematic or purposeful exclusion of any group. *State v. Fudge*, 361 Ark. 412, 206 S.W.3d 850 (2005).

16-32-104. Jury wheel or box.

(a)(1) The names and last known addresses of the persons selected shall be placed, in the presence of the circuit judge and the circuit clerk, in a circular hollow wheel or a large box constructed of sturdy and durable material. In place of names and addresses, the court may cause cards or discs, numbered serially, to reflect the number of prospective jurors required to be placed in the box and shall cause the names on the master list to be numbered serially so that a juror on the list may be identified when his number is drawn for entry in the jury book.

(2)(A) The wheel or box shall thereafter remain locked at all times, except when in use as provided in this subchapter, by the use of two (2) separate locks so arranged that the key to one will not open the other lock. The clasps into which the locks shall be fitted shall be so arranged that the wheel or box cannot be opened unless both locks are unlocked.

(B) The key to one (1) lock shall be kept by the circuit judge, and the key to the other shall be kept by the circuit clerk.

(C) The circuit clerk of each county shall keep the wheel or box, when not in use, in a safe and secure place.

(3) Whenever the circuit judge finds that there is sufficient reason to believe that the integrity of the contents of the wheel or box may have been compromised, he or she shall cause the names in the wheel or box to be compared with the names on the master list, and the verified names shall then be placed in the wheel or box in open court.

(4) Any person other than one acting in open court as authorized by this act who shall open a jury wheel or box with intent to remove, alter, or add to its contents shall be deemed guilty of a felony, and upon conviction shall be imprisoned in the penitentiary not less than one (1) year nor more than twenty-one (21) years.

(b) The courts are authorized to use a computer program that is capable of random selection of names from the list of registered voters or the enhanced list of prospective jurors authorized under § 16-32-302

instead of maintaining the jury wheel or box required under subdivisions (a)(1)-(4) of this section.

History. Acts 1969, No. 568, §§ 14, 16, 27; A.S.A. 1947, §§ 39-206, 39-208, 39-219; Acts 2005, No. 87, § 3.

16-32-105. Drawing for petit jurors.

(a)(1) After the names have been placed in the wheel or box and not less than fifteen (15) days prior to the first jury trial in the year for which the prospective jurors have been selected, the circuit judge shall enter an order which shall be spread of record stating a time and place for the initial drawing for the names of petit jurors from the wheel or box.

(2) At the time and place designated, the wheel or box shall be unlocked in open court.

(3) After the names have been thoroughly mixed, the circuit judge shall cause to be drawn the number of names which in his or her opinion shall be necessary to provide a panel of qualified petit jurors for the trial of cases, after excuses from attendance have been granted to those who are entitled to be excused.

(4) As the names are drawn, they shall be recorded in the same order by the circuit clerk in a book to be provided for that purpose, and if the name of any person known to have died or found by the court upon inquiry to be unfit and disqualified under § 16-31-102(a) is drawn, that name shall be put aside and not used and a notation of the discarding of the name and reason therefor shall be made in the jury book.

(5) The same procedures outlined in this section shall be followed in the event all of the jurors whose names are listed in the jury book shall be excused from further service.

(b) The drawing and recording of jurors under subdivisions (a)(1)-(5) of this section may be accomplished by a computerized random jury selection process.

History. Acts 1975, No. 485, § 3; A.S.A. 1947, § 39-209.1; Acts 2005, No. 87, § 4.

CASE NOTES

Motion to Quash Jury Venire.

Where 300 jury summonses were mailed to prospective jurors, the court clerk received 200 responses, a number of prospective jurors were excused based upon their responses, and only 63 prospective jurors appeared for jury selection, the trial court did not err in denying defendant's motion to quash the jury panel because there was no suggestion that the

discrepancy in the number of venire persons scheduled for jury service and the number that actually appeared was the result of any attempt to influence the makeup of the jury panel. Because there was substantial compliance with this section and the record did not reflect the wholesale excusal of any distinctive group of prospective jurors, the trial court did not abuse its discretion in refusing to

quash the entire jury panel. Gwathney v. State, 2009 Ark. 544, 381 S.W.3d 744 (2009).

16-32-106. Summons of petit jurors.

(a) The persons whose names have been selected under § 16-32-105 shall be summoned to appear on a date set by the court to answer questions concerning their qualifications and unless excused or disqualified, to serve the required number of days or for the maximum period during the calendar year for which selected unless sooner discharged.

(b) Jurors shall be summoned by the court or by the sheriff, as the court directs, by:

- (1) A notice dispatched by first-class mail;
- (2) Notice given personally on the telephone; or
- (3) Service of summons personally or by such other method as is permitted or prescribed by law.

(c)(1)(A) If a notice is dispatched by first-class mail, the prospective jurors shall be given a date certain to contact the sheriff or the court to confirm receipt of the notice.

(B) Not later than five (5) days before the prospective juror is to appear, the sheriff or the court shall contact the prospective juror if the prospective juror has failed to acknowledge receipt of the notice.

(C) The court shall have discretion to determine whether the sheriff or the court will be the prospective juror's primary contact.

(2) A notice dispatched by first-class mail shall be sent on a form approved by the Administrative Office of the Courts or it shall include the following language:

"You are hereby notified that you have been chosen as a prospective juror. You must notify the sheriff [or the court] on or before(date)to confirm that you have received this notice. If you do not notify the sheriff [or the court] to confirm this notice, the sheriff [or the court] will contact you and there will be added cost. Please call the sheriff [or the court] at(phone number)"

(d) Unless excused by the circuit judge, a juror who has been legally summoned and who shall fail to attend on any date when directed to do so may be fined in any sum not less than five dollars (\$5.00) nor more than five hundred dollars (\$500). However, nothing in this subsection shall be construed to limit the inherent power of the court to punish for contempt. All excuses granted by the circuit judge shall be noted in the jury book or the computer program described in § 16-32-103.

History. Acts 1969, No. 568, §§ 18, 19; A.S.A. 1947, §§ 39-210, 39-211; Acts 1989, No. 892, § 1; 2005, No. 87, § 5.

CASE NOTES**Construction.**

Subsection (c)(1) did not require five days' notice to jurors; rather, it provides that when jurors were mailed a notice to serve, they were to confirm with the sheriff that it was received and if no confirma-

tion was given, the sheriff was to follow up with a telephone call to the non-responsive panel member not later than five days before trial. *Taylor v. State*, 76 Ark. App. 279, 64 S.W.3d 278 (2001).

16-32-108. Additional jurors.

(a)(1) If at any time it appears that a sufficient number of qualified jurors are not available to try scheduled cases, additional names may be drawn and recorded in the jury book in open court or randomly selected by computer program described in § 16-32-103. These jurors shall be summoned as provided in § 16-32-106(b).

(2) The circuit judge may, at any time, in the exercise of his or her discretion, direct the jury commissioners who selected the original names placed in the wheel or jury box, or new commissioners designated by him or her, to meet and submit the names and last known addresses of additional registered voters whom the commissioners shall select in the manner provided by § 16-32-103(a)-(d). These names and addresses shall be placed by the commissioners within the wheel or box when it is next unlocked in open court and prior to any additional drawing of jurors, and a master list shall be presented to the court as provided in § 16-32-103(a)-(d).

(b) The drawing and recording of additional jurors pursuant to subdivisions (a)(1) and (2) of this section may be accomplished by a computerized random jury selection process.

History. Acts 1975, No. 485, § 4; A.S.A. 1947, § 39-212.1; Acts 2005, No. 87, § 6.

16-32-111. Confidentiality of juror information.

(a) As used in this section, "juror information" means:

- (1) An original or a copy of a list of potential jurors;
- (2) A list of potential jurors who were sworn and qualified;
- (3) Any response to a juror questionnaire; and
- (4) A list of an individual venire panel.

(b) Upon application by any person and findings on the record for good cause, any juror information submitted to a circuit court or circuit clerk from which the identity of a particular juror can be determined is confidential and shall not be released or otherwise made available except:

- (1) To any attorney eligible to represent a party in a proceeding before the circuit court;
- (2) To a party appearing pro se in a proceeding before the circuit court and limited to the juror information relevant to that particular proceeding;

(3) For any audit or similar activity conducted with the administration of any plan or program by any governmental agency that is authorized by law to conduct the audit or activity; or

(4) To a grand jury or court upon a finding that the juror information is necessary for the determination of an issue before the grand jury or court.

(c)(1) The circuit clerk shall require a signed receipt from any person who receives juror information under subsection (b) of this section.

(2) The signed receipt shall be maintained in the jury records of the circuit clerk.

(d)(1) Except as provided in subdivision (d)(2) of this section, no person to whom disclosure is made under this section may disclose to any other person juror information obtained under this section.

(2) Disclosure of juror information may be made to the following persons without violating subdivision (d)(1) of this section:

(A) A client or a legally authorized representative of a client of an attorney who receives the juror information;

(B) An employee of an attorney who receives the juror information;

(C) An attorney associated with an attorney who receives the juror information; or

(D) A person with whom an attorney or a party appearing pro se who receives the juror information may consult or confer regarding potential jurors in a specific case.

(e) A disclosure of juror information in violation of this section is a Class C misdemeanor.

History. Acts 2007, No. 226, § 2.

SUBCHAPTER 2 — CRIMINAL PROCEEDINGS

SECTION.

16-32-201. Selection of grand jury.

Effective Dates. Acts 2005, No. 87, § 12: Feb. 8, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the present method of selecting grand jurors and petit jurors is inadequate to permit computerized random selection; that this act will provide for the computerized random selection of jurors; and that until this act becomes effective, the validity of findings and judgments issued by juries selected randomly by com-

puter is subject to question. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-32-201. Selection of grand jury.

(a)(1) The selecting, summoning, and impaneling of a grand jury shall be as prescribed by law.

(2)(A) Circuit courts to which criminal cases are assigned may call grand jurors from the wheel or box from which petit jurors are drawn, or the circuit judge may direct the jury commissioners to provide the minimum number of names for a separate grand jury wheel or box in the minimum number set forth in § 16-32-103(a)-(d).

(B) In the event the circuit judge directs the jury commissioners to provide the minimum number of names for a separate grand jury wheel or box, the jury commissioners shall select the names of persons whom they believe to be qualified from the current voter registration list or the enhanced prospective juror list authorized by § 16-32-302.

(3) In either event, when a grand jury is selected, the names of a sufficient number of persons shall be drawn from the appropriate box or wheel to provide a panel of sixteen (16) qualified grand jurors, plus a reasonable number of alternates, after excuses from attendance have been granted to those who are entitled to be excused.

(4) As the names are drawn, they shall be recorded in the grand jury book, and the grand jurors shall be summoned and directed to appear in the same manner as provided for petit jurors.

(5) The grand jury shall be made up of the first sixteen (16) persons summoned whose names appear as grand jurors in the jury book after the elimination of the disqualified or excused persons.

(6)(A) The remaining grand jurors whose names appear in the jury book after the elimination of disqualified or excused persons shall be considered as alternates and shall be designated in the order as they appear in the jury book to replace regular grand jurors who become incapacitated or who are unavailable.

(B) Alternate grand jurors shall not be disqualified from further jury duty as provided in § 16-31-104 until they have been required to report for grand jury service during the year.

(7) Grand jurors shall serve during the calendar year in which selected unless sooner discharged by the court.

(b) The drawing and recording of grand jurors under subsection (a) of this section may be accomplished by a computerized random jury selection process.

(c) In either event, when a grand jury is selected, the names of a sufficient number of persons shall be drawn from the appropriate box or wheel to provide a panel of sixteen (16) qualified grand jurors, plus a reasonable number of alternates, after excuses from attendance have been granted to those who are entitled to be excused.

(d) As the names are drawn, they shall be recorded in the grand jury book, and the grand jurors shall be summoned and directed to appear in the same manner as provided for petit jurors.

(e) The grand jury shall be made up of the first sixteen (16) persons summoned whose names appear as grand jurors in the jury book after the elimination of the disqualified or excused persons.

(f) The remaining grand jurors whose names appear in the jury book after the elimination of disqualified or excused persons shall be considered as alternates and shall be designated in the order as they appear in the jury book to replace regular grand jurors who become incapacitated or who are unavailable. Alternate grand jurors shall not be disqualified from further jury duty as provided in § 16-31-104 until they have been required to report for grand jury service during the year.

(g) Grand jurors shall serve during the calendar year in which selected unless sooner discharged by the court.

History. Crim. Code, § 98; C. & M. 1975, No. 485, § 6; A.S.A. 1947, §§ 39-Dig., § 2977; Pope's Dig., § 3799; Acts 217.1, 43-901; Acts 2005, No. 87, § 7.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

SUBCHAPTER 3 — ENHANCED PROSPECTIVE JUROR POOL

SECTION.	SECTION.
16-32-301. Enhanced prospective juror pool.	16-32-303. Judicial determination of need for expanded list.
16-32-302. Enhanced list of prospective jurors.	16-32-304. List of disqualifications not affected.

Effective Dates. Acts 2005, No. 87, § 12: Feb. 8, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the present method of selecting grand jurors and petit jurors is inadequate to permit computerized random selection; that this act will provide for the computerized random selection of jurors; and that until this act becomes effective, the validity of findings and judgments issued by juries selected randomly by com-

puter is subject to question. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-32-301. Enhanced prospective juror pool.

(a) The pool of names from which prospective jurors are chosen may be expanded from the list of registered voters to include the list of licensed drivers and persons issued an identification card under § 27-16-805.

(b) The qualifications for serving on a jury under § 16-31-101 and the disqualifications under § 16-31-102 shall apply to the enhanced prospective juror pool permitted under subsection (a) of this section.

History. Acts 2003, No. 1404, § 1; 2005, No. 87, § 8.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

CASE NOTES

Enhancement Not Warranted.

In a capital murder case, the trial court did not abuse its discretion by failing to enhance the prospective jury pool because the decision to use a list of registered voters instead of a list of licensed drivers was clearly within the court's discretion pursuant to § 16-32-303. In addition, the jury venire was randomly selected by a

computer program and race was not identified. *Thomas v. State*, 370 Ark. 70, 257 S.W.3d 92 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 397 (June 21, 2007), cert. denied, *Thomas v. Arkansas*, 552 U.S. 1025, 128 S. Ct. 620, 169 L. Ed. 2d 399, 2007 U.S. LEXIS 12155 (2007).

16-32-302. Enhanced list of prospective jurors.

(a)(1) In order to allow for the use of the enhanced prospective juror pool, the Secretary of State shall compile and make available no later than November 1 of each year, and at other times determined by the Secretary of State, an enhanced list of prospective jurors in automated or nonautomated form, as provided for in subsection (b) of this section, for:

(A) Any circuit clerk requesting an enhanced list of prospective jurors for his or her county; and

(B) The Administrative Office of the Courts for use in its automated jury management system.

(2) Neither the enhanced list of prospective jurors nor its component parts may be released by the Secretary of State, the Administrative Office of the Courts, or any county or agency receiving the list or its component parts unless otherwise permitted by law.

(3) Unlawful release of the enhanced list of prospective jurors shall be a Class B misdemeanor.

(b)(1) The Secretary of State shall receive from the Department of Finance and Administration at mutually agreeable times each year a list of all licensed drivers and persons issued identification cards under § 27-16-805 who are citizens of the United States and sixteen (16) years of age or older.

(2) The Department of Finance and Administration, the Arkansas Crime Information Center, the Department of Health, and the Administrative Office of the Courts shall assist the Secretary of State in developing a process whereby the Secretary of State will create a merged list from the voter registration list, the list of licensed drivers,

and persons issued identification cards under § 27-16-805, who are citizens of the United States and who will be eighteen (18) years of age or older at the time the list is provided to the counties or the Administrative Office of the Courts.

(3)(A) In order to improve the quality of the enhanced list of prospective jurors and to decrease the cost of summoning potential jurors, the Arkansas Crime Information Center and the Administrative Office of the Courts are authorized to provide information to the Secretary of State and the Department of Finance and Administration to identify which voters, licensed drivers, and persons issued identification cards under § 27-16-805 have been convicted of a felony and have not been pardoned.

(B) The Department of Health is authorized to provide information to the Secretary of State and the Department of Finance and Administration in order to identify which voters, licensed drivers, and persons issued identification cards under § 27-16-805 are deceased, have changed names, or have been married or divorced.

(4) The Arkansas Crime Information Center, the Administrative Office of the Courts, and the Department of Health are authorized to provide as much information as they agree is necessary and possible to enable the Secretary of State to compile the most accurate, timely, and complete merged list of voters, licensed drivers, and persons issued identification cards under § 27-16-805, who are citizens of the United States, eighteen (18) years of age or older, are still living, and who have not been convicted of a felony and have not been pardoned.

History. Acts 2003, No. 1404, § 2;
2005, No. 87, § 9.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Practice, Procedure, and Courts, Legislation, 2005 Arkansas General As- 28 U. Ark. Little Rock L. Rev. 377.

16-32-303. Judicial determination of need for expanded list.

(a) The administrative circuit judge for each county shall determine that either the list of registered voters or the enhanced list, but not both, shall be utilized in the selection of all prospective jurors for all circuit court divisions within the county, based upon a consideration of whether the use of registered voters creates a sufficient pool for the selection of jurors to offer an adequate cross section of the community.

(b) If the judge determines that the enhanced prospective juror list, as described in § 16-32-302, should be used by the county, then the judge on or before October 1 shall inform the circuit clerk who shall notify the Secretary of State and the Administrative Office of the Courts that the enhanced list will be requested for the county.

History. Acts 2003, No. 1404, § 3;
2005, No. 87, § 10.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

CASE NOTES

Enhancement Not Warranted.

In a capital murder case, the trial court did not abuse its discretion by failing to enhance the prospective jury pool because the decision to use a list of registered voters instead of a list of licensed drivers was clearly within the court’s discretion pursuant to this section. In addition, the jury venire was randomly selected by a

computer program and race was not identified. *Thomas v. State*, 370 Ark. 70, 257 S.W.3d 92 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 397 (June 21, 2007), cert. denied, *Thomas v. Arkansas*, 552 U.S. 1025, 128 S. Ct. 620, 169 L. Ed. 2d 399, 2007 U.S. LEXIS 12155 (2007).

16-32-304. List of disqualifications not affected.

This subchapter shall not affect the list of disqualifications from jury service found in § 16-31-102.

History. Acts 2003, No. 1404, § 5[4]. **A.C.R.C. Notes.** Acts 2003, No. 1404, did not contain a Section 4.

CHAPTER 33
EXAMINATION AND CHALLENGE

SUBCHAPTER.
1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
16-33-101. Examination of prospective jurors.

Effective Dates. Acts 2005, No. 87, § 12: Feb. 8, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the present method of selecting grand jurors and petit jurors is inadequate to permit computerized random selection; that this act will provide for the computerized random selection of jurors; and that until this act becomes effective, the validity of findings and judgments issued by juries selected randomly by com-

puter is subject to question. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

16-33-101. Examination of prospective jurors.

(a) In all cases, both civil and criminal, the court shall examine all prospective jurors under oath upon all matters set forth in the statutes as disqualifications.

(b) Further questions may be asked by the court or by the attorneys in the case, in the discretion of the court.

(c)(1)(A)(i) If a court utilizes prospective juror questionnaires, the questionnaires may request a prospective juror's mailing or residential address or phone number.

(ii) However, the address and phone number shall be redacted from the questionnaires before providing completed questionnaires to the attorneys for the parties.

(B) The attorneys for the parties shall be precluded from asking for that information during voir dire.

(C) However, the attorneys or the court may ask a prospective juror his or her city or town of residence.

(2) Except as provided in § 13-4-302, nothing in this section shall preclude the clerk of the court from keeping and maintaining records of potential jurors that contain mailing or residential addresses or phone numbers.

History. Init. Meas. 1936, No. 3, § 16, § 1; 2005, No. 87, § 11; 2007, No. 226, Acts 1937, p. 1384; Pope's Dig., § 3996; § 3.
A.S.A. 1947, § 39-226; Acts 2001, No. 210,

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Practice, Procedure, and Courts, 24 U. Ark. Little Rock L. Rev. 523.
Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

SUBCHAPTER 3 — CRIMINAL PROCEEDINGS

16-33-302. Challenge to trial jurors generally.

CASE NOTES

Cited: Kelly v. State, 350 Ark. 238, 85 S.W.3d 893 (2002).

16-33-303. Challenge to trial jurors — Individual juror generally.

CASE NOTES

ANALYSIS

Challenges.
Time of Challenge.

Challenges.

Trial court did not abuse its discretion under subsection (b) of this section in refusing to grant defendant's peremptory challenge after a jury had been selected as defendant failed to show good cause for the challenge; defendant's failure to

timely strike the juror was due to defendant's counsel relying upon juror numbers, rather than juror names. *Scales v. State*, 2011 Ark. App. 395, — S.W.3d — (2011).

Time of Challenge.

This section does not forbid a challenge for cause after a jury is impaneled and sworn. *Strickland v. State*, 74 Ark. App. 206, 46 S.W.3d 554, 2001 Ark. App. LEXIS 470 (2001).

16-33-304. Challenge to trial jurors — Individual juror for cause.

CASE NOTES

ANALYSIS

Failure to Challenge Juror.
Implied Bias.
Preserving Issue.
Refusal to Strike.

Failure to Challenge Juror.

Inmate's trial counsel was not ineffective for failing to challenge a juror for cause, and therefore the inmate's motion for relief under Ark. R. Crim. P. 37 was properly denied, because counsel testified that he did not believe he could prevail on such a challenge. While the juror seemed to favor the death penalty, she also replied affirmatively that she could consider the full range of punishment, that she would consider mitigating circumstances and weigh them against aggravating circumstances, and that she would have to listen to the evidence to make a decision. *Williams v. State*, 369 Ark. 104, 251 S.W.3d 290 (2007).

Implied Bias.

Trial court has discretion to excuse a juror for implied bias, even if the bias does not clearly fall within one of the categories provided under subdivision (b)(2)(B), as it would be impossible for the statute to cover every conceivable circumstance touching on a juror's possible bias; therefore, where defendant was charged with

evasion of use taxes, the trial court did not abuse its discretion in excusing for cause two prospective jurors who had been delinquent in paying personal property taxes even though subdivision (b)(2)(B) did not include that particular form of implied bias. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Court did not abuse its discretion in denying defendant's request to remove a juror and replace the juror with an alternate when midtrial, the juror informed the trial court that the juror belatedly realized that the juror attended church with the mother of one of the victims; the juror gave the trial court and counsel an opportunity to openly address the matter, defense counsel failed to ask any questions of the juror that would demonstrate the trial court abused its discretion, and no one questioned the juror about the meaning of the juror's statement that the juror did not want the case to "get thrown out or something" in the future, so the juror's response could not demonstrate prejudice. *Childs v. State*, 2010 Ark. App. 675, — S.W.3d — (2010).

Preserving Issue.

Defendant objected to seating a juror during voir dire and requested that the trial court dismiss her for cause, such that the point was preserved for review; case law does not support the argument that a

party must make an additional objection at the conclusion of voir dire. *Adams v. State*, 2009 Ark. 375, 326 S.W.3d 764 (2009), rehearing denied, *Adams v. State*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 556 (Sept. 10, 2009), cert. denied, *Adams v. Arkansas*, 559 U.S. 1021, 130 S. Ct. 1922, 176 L. Ed. 2d 392 (2010).

Refusal to Strike.

Once it was revealed that the juror knew the robbery victim's father through a golfing club and business matters, the trial court appropriately inquired as to the juror's ability to be fair and unbiased, and also allowed defense counsel and the prosecuting attorney to ask the juror questions; because the juror could set aside the his knowledge of the parties, decide the case on the facts, and abide by the law as given by the court, there was no for-cause basis to exclude the juror under this section. *Miller v. State*, 81 Ark. App. 337, 101 S.W.3d 860, 2003 Ark. App. LEXIS 250 (2003).

Juror did not evidence any specific bias against defendant, nor did she express any opinion concerning defendant's guilt and defendant failed to overcome the pre-

sumption of impartiality accorded the juror, nor had defendant shown actual prejudice resulting from the trial court's refusal to strike her from the jury for cause. *Adams v. State*, 2009 Ark. 375, 326 S.W.3d 764 (2009), rehearing denied, *Adams v. State*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 556 (Sept. 10, 2009), cert. denied, *Adams v. Arkansas*, 559 U.S. 1021, 130 S. Ct. 1922, 176 L. Ed. 2d 392 (2010).

Trial court did not err in refusing to strike a juror for actual bias because, although the juror initially equivocated about whether he could presume the innocence of defendant, when questioned by the trial judge, he agreed that he could in fact make a presumption of innocence in the case. *Gwathney v. State*, 2009 Ark. 544, 381 S.W.3d 744 (2009).

Trial court did not err in refusing to strike a juror for actual bias because the juror, when questioned by the trial judge, made clear that he could follow the law, put aside what he had seen about the case outside the courtroom, and judge the prosecution's case on its own merits. *Gwathney v. State*, 2009 Ark. 544, 381 S.W.3d 744 (2009).

16-33-305. Challenge to trial jurors — Individual juror — Peremptory.

CASE NOTES

ANALYSIS

In General.

Challenge Precluded.

Discrimination.

Number of Challenges.

In General.

Although defendant was entitled to eight peremptory charges and the trial court erred by not requiring the state to prove purposeful discrimination after defendant gave race neutral reasons for the strikes, defendant's conviction was affirmed due to his failure to mount proper arguments on appeal. *Childs v. State*, 95 Ark. App. 343, 237 S.W.3d 116 (2006).

Challenge Precluded.

In a driving while intoxicated case, appellant was unable to challenge the jurors on the basis of bias because appellant did

not object at the end of the selection process, and there was no evidence that appellant was forced to accept a juror after having exhausted her three peremptory challenges. *Carruth v. State*, 2012 Ark. App. 305, — S.W.3d — (2012).

Discrimination.

In defendant's trial for capital murder, the trial court erred in sustaining the State's Batson objection, where the State argued that defendant was using his peremptory challenges to strike jurors solely on the basis of race, because the State did not prove purposeful discriminatory intent, and because defendant offered race-neutral grounds for potential prejudice by those jurors; the trial court also erred in forcing defendant to accept at least one juror that should have been excused for cause. *Holder v. State*, 354 Ark. 364, 124 S.W.3d 439 (2003).

Number of Challenges.

In an assault case, defendant preserved a jury selection error relating to the number of peremptory challenges under this section and the Sixth Amendment because the basis of defendant's motion was clear from the context and the arguments presented; however, no reversal or mistrial was required because defendant failed to

raise an objection until after the trial had started, and there was no prejudice because the objectionable jurors did not participate in the verdict. *Smith v. State*, 90 Ark. App. 261, 205 S.W.3d 173 (2005).

Cited: *Carruth v. State*, — Ark. App. —, — S.W.3d —, 2012 Ark. App. LEXIS 432 (May 2, 2012).

CHAPTER 34**FEES AND EXPENSES****SECTION.**

16-34-101, 16-34-102. [Repealed.]

16-34-103. Per diem compensation for jurors and prospective jurors.

16-34-104. Mileage reimbursement for jurors.

SECTION.

16-34-105. [Repealed.]

16-34-106. Payment by county — Reimbursement by state.

16-34-101, 16-34-102. [Repealed.]

Publisher's Notes. These sections, concerning exceptions and compensation and reimbursement of jurors generally, were repealed by Acts 2007, No. 1033, § 1. The sections were derived from the following sources:

16-34-101. Acts 1911, No. 89, § 5; 1917,

No. 352, § 1; C. & M. Dig., § 4610; Pope's Dig., § 5699; A.S.A. 1947, § 39-306.

16-34-102. Acts 1911, No. 89, §§ 1, 4; C. & M. Dig., §§ 4605, 4606, 4609; Pope's Dig., §§ 5694, 5695, 5698; A.S.A. 1947, §§ 39-302, 39-305.

16-34-103. Per diem compensation for jurors and prospective jurors.

(a) Any person who receives official notice that he or she has been selected as a prospective juror or who is chosen as a juror is eligible to receive per diem compensation for service if:

(1) The person actually appears at the location to which the juror or prospective juror was summoned; and

(2) The person's appearance is duly noted by the circuit clerk.

(b)(1) The per diem compensation payable to any person who is eligible for payment under subsection (a) of this section and who is selected and seated to serve as a member of a grand jury or petit jury is fifty dollars (\$50.00) per day.

(2) Any person who is eligible for payment under subsection (a) of this section and who is excused or otherwise not selected and seated as a member of a grand jury or petit jury shall be provided per diem compensation of not less than fifteen dollars (\$15.00) as established by ordinance of the county quorum court.

History. Acts 1953, No. 46, § 2; 1977, No. 320, § 1; A.S.A. 1947, § 39-301; Acts 1999, No. 629, § 1; 2007, No. 1033, § 2.

16-34-104. Mileage reimbursement for jurors.

In the event and to the extent that a county quorum court adopts by ordinance a policy for reimbursement of mileage costs for jurors, any person who is eligible to receive per diem compensation under § 16-34-103 and whose primary place of residence is outside the city limits of the city where the court that summoned the juror or prospective juror is located may receive, in addition to the per diem compensation, a mileage reimbursement payment for mileage from and to his or her home by the most direct and practicable route at the rate prescribed by the county.

History. Acts 1911, No. 89, § 2; C. & M. Dig., § 4607; Pope's Dig., § 5696; Acts 1983, No. 169, § 2; A.S.A. 1947, § 39-303; Acts 2007, No. 1033, § 3.

16-34-105. [Repealed.]

Publisher's Notes. This section, concerning an account for mileage for jurors, was repealed by Acts 2007, No. 1033, § 4. The section was derived from Acts 1911, No. 89, § 3; C. & M. Dig., § 4608; Pope's Dig., § 5697; A.S.A. 1947, § 39-304.

16-34-106. Payment by county — Reimbursement by state.

(a) The per diem compensation under § 16-34-103 shall be paid promptly to each juror or prospective juror by a county from funds appropriated for that purpose by the quorum court.

(b)(1) The state shall reimburse a county for a portion of the costs incurred for a payment under § 16-34-103(b)(1) if the county makes a request under subdivision (b)(3) of this section.

(2) The Administrative Office of the Courts shall administer the state reimbursement to a county under subdivision (b)(1) of this section.

(3) A county may request reimbursement for costs incurred for a payment under § 16-34-103(b)(1) on a quarterly basis as follows:

(A) On or before May 1 of each year for costs incurred between January 1 and March 31 of that year;

(B) On or before August 1 of each year for costs incurred between April 1 and June 30 of that year;

(C) On or before December 1 of each year for costs incurred between July 1 and September 30 of that year; and

(D) On or before February 1 of each year for costs incurred between October 1 and December 31 of the prior year.

(4) The Administrative Office of the Courts shall consult with the Division of Legislative Audit and shall prescribe the information that shall be documented and certified by a county in order to receive reimbursement under subdivision (b)(1) of this section.

History. Acts 2007, No. 1033, § 5.

SUBTITLE 4. EVIDENCE AND WITNESSES

CHAPTER 40

GENERAL PROVISIONS

SECTION.

16-40-106. Privileged communications made to a certified peer

support member by an emergency responder.

16-40-101. Burden of proof.

Cross References. Burden of proof, § 16-55-215.

CASE NOTES

Foreclosure.

Where a trial court heard the testimony of two conflicting expert opinions and decided that both experts were credible, it did not err when it placed the burden of

proof upon contractors to show that their improvements increased the value of a property that had gone into foreclosure. *Del Mack Constr., Inc. v. Owens*, 82 Ark. App. 415, 118 S.W.3d 581 (2003).

16-40-104. Judicial knowledge of laws of other states.

RESEARCH REFERENCES

Ark. L. Notes. Watkins, A Guide to Choice of Law in Arkansas, 2005 Arkansas L. Notes 151.

16-40-106. Privileged communications made to a certified peer support member by an emergency responder.

(a) As used in this section:

(1) "Certified peer support member" means a law enforcement officer, firefighter, or emergency medical technician of an emergency service agency or entity who has received training in critical incident stress management and who is certified as a peer support member by the Arkansas Crisis Response Team to provide emotional or moral support to an emergency responder who needs emotional or moral support as a result of job-related stress or an incident in which the emergency responder was involved while acting in his or her official capacity; and

(2) "Peer support event" means any debriefing, defusing, or counseling session conducted by a certified peer support member that involves the emotional or moral support of an emergency responder who needs emotional or moral support as a result of job-related stress or an incident in which the emergency responder was involved while acting in his or her official capacity.

(b)(1) A certified peer support member shall not be compelled, without the consent of the emergency responder making the communication, to testify or in any way disclose the contents of any communi-

cation made to the certified peer support member by the emergency responder while engaged in a peer support event.

(2) The privilege under subdivision (b)(1) of this section only applies when the communication was made to the certified peer support member during the course of an actual peer support event.

(c) The privilege under subdivision (b)(1) of this section does not apply if:

(1) The certified peer support member was an initial emergency service responder, a witness, or a party to the incident that prompted the providing of the peer support event to the emergency responder;

(2) A communication reveals the intended commission of a crime or harmful act and the disclosure is determined to be necessary by the certified peer support member to protect any person from a clear, imminent risk of serious mental or physical harm or injury or to forestall a serious threat to the public safety; or

(3) A crime has been committed and the crime is divulged to the certified peer support member.

(d) A certified peer support member who knowingly reveals the contents of a communication privileged under this section or any person who knowingly threatens, intimidates, or forcibly compels, or attempts to threaten, intimidate, or forcibly compel a certified peer support member to disclose the contents of a privileged communication upon conviction is guilty of a Class B misdemeanor.

History. Acts 2013, No. 1353, § 1.

CHAPTER 41

UNIFORM RULES OF EVIDENCE

SECTION.

16-41-101. [Repealed.]

16-41-101. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as “SECTION 2”.

Publisher’s Notes. This chapter, concerning the Uniform Rules of Evidence, was repealed by Acts 2013, No. 1148, § 2[7]. This chapter was derived from

Acts 1975 (Extended Sess. 1976), No. 1143, § 1; 1985, No. 405, § 1; 1985, No. 462, § 1; reen. Acts 1987, No. 876, § 1; A.S.A. 1947, § 28-1001; Acts 1991, No. 361, § 1; 1992 (1st Ex. Sess.), No. 66, § 1; 1997, No. 794, § 1; 2001, No. 629, § 1.

CHAPTER 42

SEXUAL OFFENSES

SECTION.

16-42-103. Admissibility of evidence of

similar crimes in sexual assault cases.

Effective Dates. Acts 2005, No. 536, § 2: Mar. 3, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is no rule or statute that allows the introduction of evidence of a defendant's commission of another sexual assault in a criminal case; and that such a rule or statute is necessary to assist in the prosecution of sexual assaults. Therefore, an emergency is declared to exist and this

act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-42-101. Admissibility of evidence of victim's prior sexual conduct.

RESEARCH REFERENCES

Ark. L. Rev. Note, The Arkansas Rape-Shield Statute: Does It Create Another Victim?, 58 Ark. L. Rev. 949.

Note, Fells v. State: Good Decision on

Procedural Grounds, Dangerous Precedent for Future Application of Arkansas's Rape Shield Statute, 59 Ark. L. Rev. 943.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Purpose.

Applicability.

Admissibility.

—Impeachment of Victim Witness.

Consent.

Discretion of Court.

Hearing.

Interlocutory Appeal.

Jurisdiction.

Merits Not Considered.

Motions by Defendant.

Preservation.

Prior Inconsistent Statements.

Relevance.

Sexual Conduct.

Constitutionality.

The statute is constitutional and does not violate due process or equal protection rights. *Sera v. State*, 341 Ark. 415, 17 S.W.3d 61 (2000), cert. denied, *Sera v. Arkansas*, 531 U.S. 998, 121 S. Ct. 495, 148 L. Ed. 2d 466 (2000).

Rape shield statute, subsection (b) of this section, did not violate defendant's

constitutional right to present a defense during defendant's trial for rape of a minor because defendant was able to cross-examine a physician, who testified that the injury to the victim's vaginal area was not a fresh injury, but occurred sometime in the past. Defendant was also able to cross-examine the victim about her allegations. *Joyner v. State*, 2009 Ark. 168, 303 S.W.3d 54 (2009), cert. denied, *Joyner v. Arkansas*, 558 U.S. 1047, 130 S. Ct. 736, 175 L. Ed. 2d 514 (2009).

In a case in which defendant was convicted of four counts of sexual assault of a minor, the trial court properly upheld the constitutionality of the rape shield statute. The statute survived defendant's separation of powers challenge. *Nelson v. State*, 2011 Ark. 429, 384 S.W.3d 534 (2011).

In General.

Where defendant proffered the testimony of witnesses who confirmed prior false accusations of rape made by the victim, the victim's denial that she had formerly made false accusations of rape against another person meant that the rape-shield statute applied to the facts in defendant's case and, further, defendant

had failed to file pretrial motion for a determination of relevancy pursuant to subsection (c). *Taylor v. State*, 355 Ark. 267, 138 S.W.3d 684 (2003).

Purpose.

The purpose of subsection (b) of this section is to shield victims of rape or sexual abuse from the humiliation of having their personal conduct, unrelated to the charges pending, paraded before the jury and the public when such conduct is irrelevant to the defendant's guilt. *Bond v. State*, 374 Ark. 332, 288 S.W.3d 206 (2008).

Purpose of the rape shield statute, subsection (b) of this section, is to shield victims of rape or sexual abuse from the humiliation of having their personal conduct, unrelated to the charges pending, paraded before the jury and the public when such conduct is irrelevant to the defendant's guilt. *Joyner v. State*, 2009 Ark. 168, 303 S.W.3d 54 (2009), cert. denied, *Joyner v. Arkansas*, 558 U.S. 1047, 130 S. Ct. 736, 175 L. Ed. 2d 514 (2009).

Applicability.

Court rejected defendant's claim that the rape-shield statute did not apply; the evidence defendant sought to introduce clearly fell within the parameters of the rape-shield law because it was evidence of prior sexual conduct offered for the purpose of attacking the victim's credibility, and the trial court properly found that the probative value of the victim's inconsistent statements was slight and the prejudicial effect outweighed any probative value, and defendant was not prejudiced by the trial court's ruling in any event because defendant was able to achieve the purpose of impeaching the victim's veracity without touching upon her prior sexual conduct. *Turner v. State*, 355 Ark. 541, 141 S.W.3d 352, 2004 Ark. LEXIS 22 (2004).

In defendant's sexual abuse case, the court properly applied the rape shield law where the fact that the victim, who was 12 years old at the time and did not disclose to her boyfriend that her father raped her when recounting the details of her involvement with her 18-year old stepfather, did not factor into her credibility; the proffered testimony would have prejudiced the jury to question the victim's reputation, which was exactly what the rape-shield statute prohibited. *Parish v.*

State, 357 Ark. 260, 163 S.W.3d 843 (2004).

In defendant's sexual abuse case, a court properly applied the rape shield law to exclude evidence relating to previous sexual molestation charges brought by the child victim against others where the victim testified that, although she did not remember much of the circumstances surrounding the allegations against another person because she was only four years old at the time, she remembered what he did to her, and she stated that the allegations against him were true; that testimony fell squarely within the ambit of subsection (b) of this section. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004).

Human immunodeficiency virus (HIV) status of a rape victim is protected under Arkansas's rape-shield statute. *Fells v. State*, 362 Ark. 77, 207 S.W.3d 498 (2005).

Admissibility.

One should not conclude that a defendant can never present evidence of a rape victim's human immunodeficiency virus (HIV) status when that evidence is relevant to a defense at trial; on the contrary, the rape-shield statute specifically contemplates the admission of such evidence once the required procedures have been followed and the trial court has determined that the evidence is more probative than prejudicial. *Fells v. State*, 362 Ark. 77, 207 S.W.3d 498 (2005).

Trial court did not err by applying the rape shield statute to exclude evidence of the victims' sexual knowledge allegedly obtained while they were in foster care because: (1) there was no proof that the events actually occurred; (2) none of the prior sexual acts closely resembled the allegations that defendant raped the victims; (3) the alleged sexual acts with other minor children were irrelevant to defendant's having sexual intercourse with the victims; and (4) the acts were not prior to defendant's rape offenses. *White v. State*, 367 Ark. 595, 242 S.W.3d 240 (2006), rehearing denied, 367 Ark. 609, 242 S.W.3d 240 (2006), cert. denied, 550 U.S. 904, 127 S. Ct. 2114, 167 L. Ed. 2d 815 (2007).

At the sentencing phase of a rape trial, the trial court did not abuse its discretion in denying, under the rape-shield statute, defendant's motion to introduce evidence of the victim's prior sexual abuse allega-

tions against a third party because such evidence would have been more prejudicial to the victim than probative. *Keller v. State*, 371 Ark. 86, 263 S.W.3d 549 (2007).

Trial counsel was not ineffective for failing to invoke the rape shield statute (this section) or for failing to argue that the victim had said someone else had raped her or investigate those statements because if counsel had exculpatory evidence to present, the only proper means to seek admission was through a request for a hearing, and even if counsel erred in failing to request such a hearing, the postconviction relief appellant did not establish that, had counsel requested a hearing, his arguments for admission of the evidence would have been effective; there was no basis to support a claim that the evidence was needed to rebut the inference that the child victim received her knowledge of sexual matters from alleged encounters with appellant, and appellant did not establish that there was potentially relevant evidence to be discovered, or that counsel could have sought to admit, that was suitably compelling so as to overcome its highly prejudicial nature through strong probative value, as subsection (c) of this section required. *Bell v. State*, 2010 Ark. 65, 360 S.W.3d 98 (2010).

Defendant's conviction for raping his daughter under § 5-14-103(a)(4)(A)(i) was appropriate because the evidence was sufficient and because the circuit court properly denied defendant's rape-shield motions. Consent was never an issue in a rape-by-guardian case, and when consent was not an issue, whether the victim had sexual relations with a third person was entirely collateral and irrelevant under subsections (b) and (c) of this section. *Vance v. State*, 2011 Ark. 392, 384 S.W.3d 515 (2011).

—Impeachment of Victim Witness.

In defendant's sexual assault trial where defendant proffered testimony as evidence of child victim's prior inconsistent statements to undermine her credibility, the proffered testimony violated the rape-shield statute, and the trial court did not abuse its discretion by ruling that the proffered testimony was inadmissible. *Butler v. State*, 349 Ark. 252, 82 S.W.3d 152, 2002 Ark. LEXIS 359 (2002).

Although the rape shield statute is inapplicable to a juvenile delinquency

charge, the trial court may otherwise correctly find that the prior sexual history of a victim is entirely irrelevant to the crime with which juvenile is charged; thus, the proper standard of review is whether the trial court abused its discretion in excluding a juvenile's proffered testimony on the basis of that testimony's relevance under the Arkansas Rules of Evidence. *M. M. v. State*, 350 Ark. 328, 88 S.W.3d 406 (2002), rehearing denied, *M.M. v. State*, 88 S.W.3d 406, 2002 Ark. LEXIS 570 (Ark. 2002).

Consent.

Allowing an alleged rape victim's prior sexual conduct into evidence was improper because defendant was charged with raping the victim while she was physically helpless and pursuant to subdivision (a)(2)(A) of this section, a person who was physically helpless at the time of the rape was incapable of consent. Therefore, any prior sexual encounters between defendant and the victim, which might have been relevant if consent was a defense, were irrelevant where the victim could not have consented due to being physically helpless. *State v. Parker*, 2010 Ark. 173, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 315 (May 27, 2010).

Discretion of Court.

Court properly applied the rape shield law where the ruling did not impede the defense but merely prevented questioning the victim with regard to her admission that she had sex with another person subsequent to the crime by defendant; the trial court did allow defendant to argue that the victim was fabricating the allegations because she thought he was too strict with her. *Hathcock v. State*, 357 Ark. 563, 182 S.W.3d 152 (2004).

Hearing.

It was not error to refuse to allow defendant to present evidence that rape victim tested positive for human immunodeficiency virus (HIV) because defendant failed to comply with the rape-shield statute; defendant never filed the required motion or gave the trial court an opportunity to hold a hearing to determine if the probative value of the evidence was outweighed by its highly prejudicial effect. *Fells v. State*, 362 Ark. 77, 207 S.W.3d 498 (2005).

Interlocutory Appeal.

Where defendant was charged with the rape of his niece, he was permitted to introduce evidence concerning the victim's natural father having been found guilty of a sexual assault in California, but was prohibited from making any reference as to the identity of the victim in the father's case. *State v. V. Rapp*, 368 Ark. 387, 246 S.W.3d 858 (2007).

Because the Supreme Court of Arkansas had never required the "uniform administration of justice" analysis as it did in state appeals from the grant of a motion to suppress evidence or confessions, the state's appeal from an order allowing evidence under the rape-shield statute was treated as automatically appealable without resort to a normal Ark. R. App. P. — Crim. 3 analysis. *State v. Parker*, 2010 Ark. 173, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 315 (May 27, 2010).

Jurisdiction.

Because defendant's appeal involves a challenge under the rape-shield statute, the court's jurisdiction was pursuant to this section and Ark. Sup. Ct. & Ct. App. R. 1-2(a)(8). *Turner v. State*, 355 Ark. 541, 141 S.W.3d 352, 2004 Ark. LEXIS 22 (2004).

Merits Not Considered.

Defendant argued that the trial court erred in finding that evidence of sexual conversations between the victim and her boyfriend was encompassed by the rape-shield statute under this section but defendant acknowledged that the trial court allowed him to cross-examine the victim regarding her bias and allowed him to redact the messages in question to omit the sexual discussion, and defendant agreed with the trial court that the redacted version was sufficient to challenge the victim's credibility; thus, because defendant in essence agreed to the decision, the court did not reach the merits of this point on appeal. *Rackley v. State*, 371 Ark. 438, 267 S.W.3d 578 (2007).

Motions by Defendant.

In a rape prosecution, defendant was not entitled to introduce proof of the victim's prior sexual abuse due to his non-compliance with the rape-shield law; defendant failed to file a written motion as required by subdivision (c)(1) of this sec-

tion. *Hanlin v. State*, 356 Ark. 516, 157 S.W.3d 181 (2004).

Trial court did not err under the rape shield law, subsection (b) of this section, in denying defendant's motion to permit testimony concerning prior claims of sexual abuse made by a minor victim because defendant failed to prove that the prior act of sexual abuse clearly occurred; the witness affidavits that defendant presented were determined to be hearsay. *Joyner v. State*, 2009 Ark. 168, 303 S.W.3d 54 (2009), cert. denied, *Joyner v. Arkansas*, 558 U.S. 1047, 130 S. Ct. 736, 175 L. Ed. 2d 514 (2009).

Preservation.

In a rape case, defendant failed to preserve his argument that bondage activity did not fall under the rape-shield statute where he argued before the trial court that evidence that he and the victim had engaged in "rough sex" before was relevant to the defense, highly probative, and went to the credibility of the victim. Moreover, an argument relating to the right to present a defense under the Sixth and Fourteenth Amendment was also abandoned because, although the argument was contained in a written motion, defendant did not ensure that a ruling was made on it. *Rounsaville v. State*, 372 Ark. 252, 273 S.W.3d 486 (2008).

Defendant failed to preserve for review his argument that a court erred during his rape trial in not allowing testimony concerning the victim's previous sexual conduct; he failed to follow the procedure set forth in subsection (c) of this section for establishing relevancy and admissibility of evidence otherwise excluded by the rape-shield statute. *Stewart v. State*, 2012 Ark. 349, — S.W.3d — (2012).

Prior Inconsistent Statements.

In a prosecution of a father for the rape and sexual abuse of his daughter over a four year period, the trial court properly refused to allow the victim's mother and grandmother to testify to prior inconsistent statements by the victim that other men, rather than her father, had perpetrated sexual abuse upon her. *Hill v. State*, 74 Ark. App. 28, 45 S.W.3d 406 (2001).

Relevance.

In a prosecution for several criminal counts related to three sexual encounters involving the use of the drug Rohypnol

with two women, testimony by the defendant regarding a prior oral sexual encounter between himself and one of the victims, which the victim denied, has nothing to do with the episode at issue and was properly excluded. *Sera v. State*, 341 Ark. 415, 17 S.W.3d 61 (2000), cert. denied, *Sera v. Arkansas*, 531 U.S. 998, 121 S. Ct. 495, 148 L. Ed. 2d 466 (2000).

In defendant's trial for raping his step-granddaughter when she was six years old, the circuit court abused its discretion by granting defendant's motion to introduce evidence that his step-granddaughter was sexually assaulted by someone else when she was four years old; defendant's step-granddaughter's descriptions of the two incidents were substantially dissimilar and, because there was little evidence that the prior incident resembled the acts defendant allegedly committed, information about the prior incident was not relevant to the allegations against defendant. *State v. Townsend*, 366 Ark. 152, 233 S.W.3d 680 (2006).

Fact that the victim had sexual intercourse with a boy her own age was not related to whether defendant engaged in inappropriate sexual behavior with the minor victim; therefore, the trial court did not err in denying defendant's motion to have the evidence admitted. *Jackson v. State*, 368 Ark. 610, 249 S.W.3d 127 (2007), cert. denied, *Jackson v. State*, 552 U.S. 850, 128 S. Ct. 112, 169 L. Ed. 2d 79 (2007).

Trial court erred, at a rape-shield hearing pursuant to § 16-42-101(c), in granting defendant's request to introduce evidence of the child victim's allegations of sexual abuse against three others in order to show that the victim obtained sexual knowledge from a source other than defendant where the victim's descriptions of the prior abuse and the charged act were very dissimilar. *State v. Blandin*, 370 Ark. 23, 257 S.W.3d 68 (2007).

Trial court did not err in excluding evidence of the victim's prior conduct under the rape-shield statute, subsection (b) of this section, during defendant's trial for raping his daughter because evidence of the victim's prior recantation against her stepfather was only slightly relevant, if at all, to the victim's credibility and such evidence was more prejudicial than probative; the victim's prior allegation against her stepfather was not false because the

victim's mother had discovered sexually explicit photographs of the victim taken by her stepfather. *Bond v. State*, 374 Ark. 332, 288 S.W.3d 206 (2008).

In a case in which the Director of the Arkansas Department of Correction appealed a district court's decision to grant an inmate's 28 U.S.C.S. § 2254 petition for a writ of habeas corpus in which the inmate argued that the trial judge violated his constitutional right to present a defense by excluding evidence of the victim's prior sexual history pursuant to this section, the rape shield statute, the trial court determined that the evidence was irrelevant, and the decision by the Supreme Court of Arkansas to uphold the evidentiary ruling of the trial court was not contrary to, nor did it involve an unreasonable application of, clearly established federal law. *Jackson v. Norris*, 651 F.3d 923 (8th Cir. 2011).

Sexual Conduct.

Probative value of evidence of the victim's prior sexual conduct was outweighed by the prejudicial effect on the victim and the state's case; the evidence sought to be admitted by defendant was improper character evidence offered to show that the victim was an immoral person, thus, the trial court conducted the appropriate balancing test set out in subsection (c) of this section and concluded that the probative value of the evidence outweighed its prejudicial nature. *Martin v. State*, 354 Ark. 289, 119 S.W.3d 504 (2003).

Where defendant was charged with raping his girlfriend's six-year-old daughter, the circuit court did not err by excluding evidence of the uncle's molestation of the victim under the rape-shield statute, subsection (b) of this section. The sexual abuses perpetrated by defendant and the uncle hardly resembled each other; the victim spoke about the uncle's touching only after she had already told her therapist about defendant's abuse. *Swaim v. State*, 2009 Ark. App. 557, — S.W.3d — (2009).

State prisoner was granted federal habeas relief because this section, the Arkansas Rape Shield Statute, was applied by the state courts in a manner that excluded evidence that was relevant to the issue of the victim's motive to lie--i.e. that she had consensual sex with a boyfriend near her own age--and its exclusion im-

paired the prisoner’s constitutional right to present a full and fair defense. Jackson v. Norris, 734 F. Supp. 2d 606 (E.D. Ark. 2010).
Cited: Ridling v. State, 348 Ark. 213, 72 S.W.3d 466 (2002); Small v. State, 371 Ark. 244, 264 S.W.3d 512 (2007); Allen v. State, 374 Ark. 309, 287 S.W.3d 579 (2008); Woodall v. State, 2011 Ark. 22, 376 S.W.3d 408 (2011).

16-42-103. Admissibility of evidence of similar crimes in sexual assault cases.

(a) In a criminal case where the defendant is accused of a sexual assault, evidence of the defendant’s commission of another sexual assault is admissible and may be considered for its bearing on any matter to which it is relevant, subject to the circuit court’s consideration of the admissibility of any such evidence under Rule 403 of the Arkansas Rules of Evidence.

(b) In a case where the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant or the defendant’s attorney if an attorney is representing the defendant, including statements of witnesses or a summary of the substance of any testimony at least forty-five (45) days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This section shall not be construed to limit the admission or consideration of evidence under any rule of the Arkansas Rules of Evidence, the Arkansas Rules of Criminal Procedure, or any law.

(d) For purposes of this section, the term “sexual assault” includes the following offenses:

- (1) Rape, § 5-14-103;
- (2) Sexual assault in the first degree, § 5-14-124; and
- (3) Sexual assault in the second degree, § 5-14-125.

History. Acts 2005, No. 536, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

CHAPTER 43

WITNESSES GENERALLY

SUBCHAPTER.

- 2. SECURING ATTENDANCE GENERALLY.
- 6. IMMUNITY — CRIMINAL PROCEEDINGS.
- 7. EXAMINATION. [REPEALED.]
- 8. COMPENSATION.
- 11. DISCLOSURES OF GENETIC INFORMATION.
- 12. SAFEGUARDS FOR ABUSED AND NEGLECTED CHILDREN ACT.

SUBCHAPTER 2 — SECURING ATTENDANCE GENERALLY

SECTION.

- 16-43-205. Authorization for officials taking depositions to compel attendance of witnesses.
- 16-43-206. Discharge of contempt order.
- 16-43-210. Criminal proceedings — Attendance by witness in several criminal cases.

SECTION.

- 16-43-212. Criminal proceedings — Issuance of subpoenas pursuant to investigations.
- 16-43-215. Videotaped deposition of State Crime Laboratory analyst.

16-43-205. Authorization for officials taking depositions to compel attendance of witnesses.

Every person in this state who is required to take depositions or examinations of witnesses by virtue of any commission issued out of any court of record of this or any other government shall have power to issue subpoenas for witnesses to appear and testify and to compel their attendance in the same manner and under the same penalties as any court of record of this state.

History. Rev. Stat., ch. 48, § 14; C. & M. Dig., § 4154; Pope's Dig., § 5164; A.S.A. 1947, § 28-504; Acts 2003, No. 1185, § 182.

16-43-206. Discharge of contempt order.

A witness imprisoned or fined for contempt by an officer before whom his or her deposition is being taken may apply to the circuit judge, who shall have power to discharge the witness if it appears that the imprisonment is illegal.

History. Civil Code, §§ 587, 590-592; C. & M. Dig., §§ 4163, 4166-4168; Pope's Dig., §§ 5173, 5176-5178; A.S.A. 1947, §§ 28-512, 28-515 — 28-517; Acts 2005, No. 1994, § 315.

16-43-208. Criminal proceedings — Subpoenas for witnesses generally.

CASE NOTES

Cited: Holder v. State, 354 Ark. 364, 124 S.W.3d 439 (2003).

16-43-210. Criminal proceedings — Attendance by witness in several criminal cases.

A witness subpoenaed to attend before any circuit court in more than one (1) criminal case at the same time shall be allowed pay, when the costs are paid by the county, in only one (1) case and only for the actual number of days he or she is in attendance, regardless of the number of cases in which he or she is summoned or called upon to testify.

History. Acts 1875, No. 77, § 40, p. § 5701; A.S.A. 1947, § 43-2003; Acts 167; C. & M. Dig., § 4612; Pope's Dig., 2005, No. 1994, § 263.

16-43-212. Criminal proceedings — Issuance of subpoenas pursuant to investigations.

(a) The prosecuting attorneys and their deputies may issue subpoenas in all criminal matters they are investigating and may administer oaths for the purpose of taking the testimony of witnesses subpoenaed before them. Such oath when administered by the prosecuting attorney or his or her deputy shall have the same effect as if administered by the foreman of the grand jury. The subpoena shall be substantially in the following form:

“The State of Arkansas to the Sheriff of _____ County: You are commanded to summon _____ to attend before the Prosecuting Attorney at _____, A.D. 20 _____.M., and testify in the matter of an investigation then to be conducted by the said Prosecuting Attorney growing out of a representation that _____ has committed the crime of _____ in said County. Witness my hand this _____, A.D. 20 ____.

Prosecuting Attorney

By _____

Deputy Prosecuting Attorney”

(b) The subpoena provided for in subsection (a) of this section shall be served in the manner as provided by law and shall be returned and a record made and kept as provided by law for grand jury subpoenas. The fees and mileage of officers serving the subpoenas and of witnesses in appearances in answer to the subpoenas shall be the same and shall be paid in the same manner as provided by law for grand jury witnesses.

(c) The failure of any officer to serve the subpoena or of a witness to appear on the returned date shall constitute a Class B misdemeanor.

History. Acts 1937, No. 160, §§ 1-3; §§ 43-801 — 43-803; Acts 2005, No. 1994, Pope's Dig., § 3793-3795; A.S.A. 1947, § 395.

CASE NOTES

ANALYSIS

Attorney-Client Privilege.
Authority of Prosecutor.

Attorney-Client Privilege.

Where an accident reconstructionist was hired by an attorney representing a driver who was involved in a car accident, the accident reconstruction report and testimony of the accident reconstruction-

ist's employee were confidential, privileged communications that could not be subpoenaed. *Holt v. McCastlain*, 357 Ark. 455, 182 S.W.3d 112 (2004).

Authority of Prosecutor.

Where a prosecutor issued a subpoena to obtain the defendant's medical records from a county health department after two people tested positive for HIV and reported that they believed they had con-

tracted it from the defendant, the prosecutor properly used the subpoena as an investigatory tool and not as a tool for a police investigation. *Weaver v. State*, 66 Ark. App. 249, 990 S.W.2d 572 (1999), cert. denied, *Weaver v. Arkansas*, 528 U.S. 913, 120 S. Ct. 265, 145 L. Ed. 2d 222 (1999).

Defendant's first-degree murder conviction was overturned and the case was remanded for a new trial where a witness's prior inconsistent statement was improperly admitted. The prosecutor's subpoena of the witness was not used for the deputy prosecutor's investigation, but

instead was used for a detective's investigation, and the detective was not an official authorized to take the witness's statement under § 16-43-212(a). *Stephens v. State*, 98 Ark. App. 196, 254 S.W.3d 1 (2007).

During a capital murder trial, the court did not err in admitting text messages from a cellular telephone number assigned to defendant because the prosecutor's subpoena requests were not unreasonable in scope or irrelevant; the prosecutor did not abuse the prosecutor's subpoena power. *Gulley v. State*, 2012 Ark. 368, — S.W.3d — (2012).

16-43-215. Videotaped deposition of State Crime Laboratory analyst.

(a) As used in this section, the term "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination, and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

(b)(1) In all criminal trials in which the defendant is charged under the Uniform Controlled Substances Act, § 5-64-101 et seq., upon motion of the prosecuting attorney and after notice to the opposing counsel, the court, for good cause shown and sufficient safeguards to satisfy all state and federal constitutional requirements of oath, confrontation, cross-examination, and observation of the demeanor of the witness and testimony by the defendant, the court, and the jury, and absent a showing of prejudice by the defendant, may order the taking of a videotaped deposition of any State Crime Laboratory analyst.

(2) The videotaped deposition shall be taken at the State Crime Laboratory, or at a location ordered by the court, in the presence of the prosecuting attorney, the defendant, and the defendant's attorney.

(3) Examination and cross-examination of the analyst shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of the Arkansas Rules of Evidence.

(c)(1) Any videotaped deposition taken under the provisions of this section shall be admissible at trial and received into evidence in lieu of the direct testimony of the analyst.

(2) However, neither the presentation nor the preparation of such videotaped deposition shall preclude the prosecutor or the defendant's attorney from calling the analyst to testify at trial if that is necessary to serve the interests of justice.

History. Acts 2001, No. 1234, § 1; 2013, No. 1148, § 7[8].

contained two sections designated as "SECTION 2".

A.C.R.C. Notes. Acts 2013, No. 1148, **Amendments.** The 2013 amendment,

in (b)(3), deleted “Uniform” following “Arkansas” and “§ 16-41-101” following “Evidence.”

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Practice, Procedure, and Courts, Legislation, 2001 Arkansas General As- 24 U. Ark. Little Rock L. Rev. 523.

SUBCHAPTER 3 — UNIFORM RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS ACT

16-43-301. Interstate rendition of prisoners as witnesses — Definitions.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

SUBCHAPTER 4 — UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES

16-43-402. Attendance in another state.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

16-43-403. Witness from another state.

CASE NOTES

Cited: *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004).

SUBCHAPTER 6 — IMMUNITY — CRIMINAL PROCEEDINGS

SECTION.
16-43-602. Penalty.

16-43-601. Definitions.

CASE NOTES

Cited: *Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999).

16-43-602. Penalty.

Any person who refuses to give testimony after an order has been issued by the circuit court for the judicial district in which the proceeding is or may be held directing him or her to give such testimony, as provided in this subchapter shall be guilty of a Class B misdemeanor. Each refusal of the witness to so testify shall constitute a separate offense.

History. Acts 1973, No. 561, § 5; A.S.A. 1947, § 28-535; Acts 2005, No. 1994, § 396.

16-43-605. Court order approving grant of immunity — Granting of immunity only after refusal to testify.**CASE NOTES**

Cited: Hale v. State, 343 Ark. 62, 31 S.W.3d 850 (2000).

SUBCHAPTER 7 — EXAMINATION**SECTION.**

16-43-701 — 16-43-703. [Repealed.]

16-43-701 — 16-43-703. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as “SECTION 2”.

Publisher’s Notes. This subchapter, concerning examination of witnesses, was repealed by Acts 2013, No. 1148, § 8[9]. This subchapter was derived from the following sources:

16-43-701. Civil Code, § 659; C. & M.

Dig., § 4192; Pope’s Dig., § 5203; A.S.A. 1947, § 28-701.

16-43-702. Civil Code, § 651; C. & M. Dig., § 4184; Pope’s Dig., § 5194; A.S.A. 1947, § 28-704.

16-43-703. Civil Code, § 657; C. & M. Dig., § 4190; Pope’s Dig., § 5200; A.S.A. 1947, § 28-710.

SUBCHAPTER 8 — COMPENSATION**SECTION.**

16-43-801. Witness fees generally.

16-43-804. Proof of attendance.

SECTION.

16-43-806. State employee as a witness.

16-43-801. Witness fees generally.

Witnesses shall be allowed compensation as follows:

(1) For attendance before any circuit court, arbitration, auditor, commissioner, or other persons in civil cases, five dollars (\$5.00) per day; and

(2) For attendance in criminal cases, five dollars (\$5.00) per day.

History. Acts 1875, No. 77, § 39, p. 344, § 1; A.S.A. 1947, § 28-524; Acts 167; C. & M. Dig., § 4611; Pope's Dig., 2005, No. 1994, § 264. § 5700; Acts 1969, No. 157, § 1; 1975, No.

16-43-804. Proof of attendance.

(a) Every account for attendance of a witness shall be sworn to and shall state that he or she was summoned to attend as a witness in the cause upon which the charge is made, shall state the number of days he or she attended, and, if the witness was summoned outside the limits of the county in which he or she resides, shall state the number of miles he or she traveled in consequence of the summons.

(b) Every witness shall prove his or her attendance before any court, whether the case is determined or not, before the clerk of the court before which he or she may be summoned to appear.

History. Acts 1875, No. 77, §§ 43, 45, p. Dig., §§ 5704, 5705; A.S.A. 1947, §§ 28-167; C. & M. Dig., §§ 4615, 4616; Pope's 528, 28-529; Acts 2003, No. 1185, § 183.

16-43-806. State employee as a witness.

(a) If a state employee is subpoenaed as a witness to give a deposition or testimony at a hearing in state or federal court or before any body with power to issue a subpoena, the state employee is:

(1) Entitled to retain any witness fees that may be tendered to him or her under state or federal law or court rules only if the matter is:

(A) Outside the employee's scope of state employment; or

(B) The employee is a party to the matter other than as a representative of the state employer; and

(2) Entitled to retain any mileage fees that may be tendered to him or her under state or federal law or court rules only if the matter is:

(A) Within the employee's scope of state employment and the employee uses a personal vehicle for travel in obeying the subpoena and the employee's employer does not reimburse the employee for travel expenses; or

(B) Outside the employee's scope of state employment and the employee does not use a state-owned vehicle for travel in obeying the subpoena.

(b) If the state employee is subpoenaed for purposes under subsection (a) of this section to appear on a nonwork day, the employee may retain any witness and mileage fees tendered to him or her.

History. Acts 2005, No. 1845, § 5.

SUBCHAPTER 9 — PATERNITY OR CHILD SUPPORT

16-43-901. Competent witnesses.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual
Survey of Caselaw, Family Law, 24 U.
Ark. Little Rock L. Rev. 1021

CASE NOTES

Cited: Putt v. Suttles, 2011 Ark. App.
688, 386 S.W.3d 623 (2011).

SUBCHAPTER 11 — DISCLOSURES OF GENETIC INFORMATION

SECTION.
16-43-1101. Compulsory disclosure.

16-43-1101. Compulsory disclosure.

No person or other entity who maintains genetic information shall be compelled to disclose such information pursuant to a request for compulsory disclosure in any judicial, legislative, or administrative proceeding, unless:

- (1) The request for compulsory disclosure is in accordance with court-ordered paternity testing in a civil action to determine paternity;
- (2) The individual whose genetic information is requested is a party to the proceeding and the genetic information is at issue;
- (3) The genetic information is for use in a law enforcement investigation or criminal trial; or
- (4) The genetic information is for use in a law enforcement investigation where an insurer is reporting fraud or criminal activity.

History. Acts 2001, No. 1222, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Practice, Procedure, and Courts,
Legislation, 2001 Arkansas General As- 24 U. Ark. Little Rock L. Rev. 523.

SUBCHAPTER 12 — SAFEGUARDS FOR ABUSED AND NEGLECTED CHILDREN
Act

SECTION.
16-43-1201. Title.
16-43-1202. Safeguards for child victims

testifying in judicial and
administrative proceed-
ings.

16-43-1201. Title.

This subchapter shall be known and may be cited as the “Safeguards for Abused and Neglected Children Act”.

History. Acts 2007, No. 703, § 15.

16-43-1202. Safeguards for child victims testifying in judicial and administrative proceedings.

In order to facilitate testimony that is fair and accurate, the following safeguards should be followed:

(1) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall inform the child about the nature of the judicial proceeding or administrative proceeding;

(2) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall explain:

(A) The oath that will be administered to the child; and

(B) That the judge will determine whether the child is competent to testify;

(3) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall explain to the child that if the child does not understand a question while testifying in the judicial proceeding or administrative proceeding, the child has a right to say that he or she does not understand the question;

(4) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion to have the child testify at a time of day when the child is most alert and best able to understand questions posed in court;

(5) If it is in the child’s best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a comfort item when testifying in a judicial or administrative proceeding;

(6) If it is in the child’s best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a support person present when the child testifies in a judicial proceeding or an administrative proceeding; and

(7) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney shall consider the effect upon the child when the child is subjected to argumentative or harassing questions and shall make the proper objections when appropriate to ensure that the child is not subjected to argumentative or harassing questioning.

History. Acts 2007, No. 703, § 15.

CHAPTER 44

DEPOSITIONS

SUBCHAPTER.

2. CRIMINAL PROCEEDINGS.

SUBCHAPTER 2 — CRIMINAL PROCEEDINGS

SECTION.

16-44-202. Deposing witnesses upon
showing of inability to at-

tend trial — Use of depositions.

16-44-201. Authorization for deposition generally — Manner of taking — Use.

CASE NOTES

Constitutionality.

Neither the Federal nor Arkansas Constitutions render this section unconstitutional on the basis that it does not provide

for compulsory depositions in criminal proceedings. *McDole v. State*, 339 Ark. 391, 6 S.W.3d 74 (1999).

16-44-202. Deposing witnesses upon showing of inability to attend trial — Use of depositions.

(a) If it appears that a prospective witness may be unable to attend or be prevented from attending a trial or hearing, that his or her testimony is material, and that it is necessary to take his or her deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may order, upon motion of either party and notice to the parties, that his or her testimony be taken by deposition and that any designated books, papers, documents, or tangible objects not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his or her deposition be taken. After the deposition has been subscribed, the court may discharge the witness.

(b) If a defendant is without counsel, the court shall advise him or her of the right provided for in subsection (a) of this section and assign counsel to represent him or her unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the state.

(c) A deposition shall be taken in the manner provided in civil actions. The court at the request of either party may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(d) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears:

(1) That the witness is dead;

(2) That the witness is out of the State of Arkansas unless it appears that the absence of the witness was procured by the party offering the deposition;

(3) That the witness is unable to attend or testify because of sickness or infirmity; or

(4) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him or her to offer all of it which is relevant to the part offered and any party may offer other parts.

(e) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(f) This section shall be applicable to city, district, and circuit courts of this state.

History. Acts 1971, No. 381, §§ 1, 4; 2011.1, 43-2011.4; Acts 2003, No. 1185, 1979, No. 1022, § 2; A.S.A. 1947, §§ 43- §§ 184, 185.

CHAPTER 45

AFFIDAVITS

SECTION.

16-45-104. Affidavit as to correctness of account.

16-45-104. Affidavit as to correctness of account.

(a)(1) In a suit on an account, including without limitation a credit card account or other revolving credit account, in a court of this state, the affidavit of the plaintiff that the account is just and correct, taken and certified according to law, is sufficient to establish the account.

(2) However, if the defendant denies under oath the correctness of the account, the plaintiff is held to prove by other evidence the part of the account in dispute.

(b) An affidavit of account under subsection (a) of this section shall be attached to the complaint and shall contain:

(1) The name of:

(A) The creditor to whom the account is owed;

(B) The creditor pursuing collection of the account; and

(C) The debtor obligated to pay the account;

(2)(A) A statement or disclosure of whether or not the debtor's account has been assigned or is held by the original creditor.

(B) If the account has been assigned, the affidavit shall state the name of the original creditor;

(3) A statement of the affiant's authority to execute the affidavit on behalf of the creditor, including the affiant's job title or relationship to the creditor;

(4) A statement that the affiant is familiar with the books and records of the creditor and the account;

(5) A statement that the information and amount stated in the affidavit is true and correct to the best of affiant's knowledge, information, and belief;

(6) The interest rate and the source of the interest rate; and

(7) The total amount due, including interest, at the time the affidavit is executed.

History. Acts 1867, No. 102, § 1, p. 210; C. & M. Dig., § 4200; Pope's Dig., § 5211; A.S.A. 1947, § 28-202; Acts 2011, No. 992, § 1.

Amendments. The 2011 amendment added the (a) designation and rewrote (a); and added (b).

CASE NOTES

Prima Facie Case.

Company did not violate Ark. R. Civ. P. 10(d) by failing to attach to its complaint individual charge slips signed by a debtor; the complaint was accompanied by numerous documents on which its claim was based: a signed credit card application; invoices that bore the debtor's name and

showed charges and payments made on the account; other statements of account; a card-member agreement containing contractual terms of usage and payment; and an affidavit of account. *Cavalry Spv, LLC v. Anderson*, 99 Ark. App. 309, 260 S.W.3d 331 (2007).

16-45-105. Production of affiant for cross-examination upon motion to discharge provisional remedy.

CASE NOTES

Cited: *Miller v. Transamerica Commercial Fin. Corp.*, 74 Ark. App. 237, 47 S.W.3d 288 (2001).

CHAPTER 46

DOCUMENTARY EVIDENCE GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PUBLIC RECORDS AS EVIDENCE GENERALLY.
3. HOSPITAL RECORDS ACT.
4. PATIENT MEDICAL RECORDS PRIVACY ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

16-46-101. Recordation of certain certified copies — Photographic copies of business and public records.

16-46-105. Records of and testimony before committees reviewing

SECTION.

and evaluating quality of medical or hospital care.

16-46-106. Access to medical records.

16-46-109. Proceedings, minutes, records, or reports confidential.

16-46-101. Recordation of certain certified copies — Photographic copies of business and public records.

(a)(1) The clerk of any court of record may record any certified copy of any instrument by attaching the certified copy to his or her record book so as to make the copy be and become a part of the record to the extent that the copy cannot be detached, and the copy shall be legally recorded when the attachment has been made by the clerk. This subdivision (a)(1) shall apply to plats, blueprints, and photostatic copies only.

(2)(A) The county recorders, municipal clerks and recorders, clerks of courts of record, and any public officers whose duty it is to make public records are authorized to use and employ an approved system of photographic recording, photostatic recording, microfilm, microcard, miniature photographic recording, optical disc, or other process which accurately reproduces or forms a durable medium for reproducing the original when provided with equipment necessary for such method of recording.

(B) When any document is recorded by the means prescribed by subdivision (a)(2)(A) of this section, the original may be destroyed unless the document is over fifty (50) years old and handwritten or its preservation is otherwise required by law.

(b)(1) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law.

(2) The reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not.

(3) An enlargement or facsimile of the reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court.

(4) The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original.

History. Acts 1929, No. 189, § 5; Pope's Dig., § 5669; 1953, No. 64, § 1; 1963, No. 235, § 1; A.S.A. 1947, §§ 16-117, 28-932; Acts 1993, No. 1150, § 1; 1995, No. 454, § 1; 1995, No. 566, § 1; 1997, No. 636, § 1.

Publisher's Notes. This section is set out above to correct an error.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

16-46-102. Writing filed with pleading read as genuine unless denied.

CASE NOTES

Affidavit.

Company did not violate Ark. R. Civ. P. 10(d) by failing to attach to its complaint individual charge slips signed by a debtor; the complaint was accompanied by numerous documents on which its claim was based: a signed credit card application; invoices that bore the debtor's name and

showed charges and payments made on the account; other statements of account; a card-member agreement containing contractual terms of usage and payment; and an affidavit of account. *Cavalry Spv, LLC v. Anderson*, 99 Ark. App. 309, 260 S.W.3d 331 (2007).

16-46-105. Records of and testimony before committees reviewing and evaluating quality of medical or hospital care.

(a)(1)(A) The proceedings, minutes, records, or reports of organized committees of hospital medical staffs or medical review committees of local medical societies, or a committee organized by and operating pursuant to a written plan or policy under the auspices of a professional corporation or a professional limited liability company whose members are licensed to practice medicine in this state, having the responsibility for reviewing and evaluating the quality of medical or hospital care, and any records, other than those records described in subsection (c) of this section, compiled or accumulated by the administrative staff of such hospitals or a physician group peer review committee as defined under § 20-9-501 in connection with such review or evaluation, together with all communications or reports originating in such committees, shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq., or admissible in any legal proceeding and shall be absolutely privileged communications.

(B) The submission of such proceedings, minutes, records, reports, and communications to a hospital governing board or physician group peer review committee as defined under § 20-9-501 shall not operate as a waiver of the privilege.

(2) Neither shall testimony as to events occurring during the activities of such committees be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq., or admissible.

(b)(1) Nothing in this section shall be construed to prevent disclosure of the data mentioned in subsection (a) of this section to appropriate state or federal regulatory agencies which by statute or regulation are entitled to access to such data, nor to:

(A) An organized committee of hospital medical staffs or governing boards where the medical practitioner seeks membership or clinical privileges; or

(B) A committee organized by and operating pursuant to a written plan or policy under the auspices of a professional corporation or a professional limited liability company whose members are licensed to practice medicine in this state.

(2) Further, nothing in this section shall be construed to prevent discovery and admissibility if the legal action in which such data is sought is brought by a medical practitioner who has been subjected to censure or disciplinary action by such agency or committee or by a hospital medical staff or governing board.

(c) Nothing in this section or § 20-9-308 shall be construed to apply to original hospital medical records, incident reports, or other records with respect to the care or treatment of any patient or to affect the discoverability or admissibility of such records.

History. Acts 1977, No. 445, §§ 1, 3; A.S.A. 1947, §§ 28-934, 28-935; Acts 1995, No. 885, § 1; 1999, No. 1536, § 8; 2013, No. 441, §§ 3, 4.

Amendments. The 2013 amendment, in (a)(1)(A), inserted “or a committee organized . . . practice medicine in this state” and “or a physician group peer

review committee as defined under § 20-9-501”; inserted “or physician group peer review committee as defined under § 20-9-501” in (a)(1)(B); inserted the (b)(1)(A) designation; substituted “An organized committee” for “organized committees” in (b)(1)(A); and added (b)(1)(B).

CASE NOTES

ANALYSIS

Privileged Communications.
Review of Discovery Orders.

Privileged Communications.

Hospital's insurer did not have to respond to a production request seeking the production of documents reflecting the activities of the hospital's strategic quality management committee because those documents were protected by the quality assurance and review privilege provided for in this section. *Clark v. Baka*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 84570 (E.D. Ark. Oct. 9, 2008).

Review of Discovery Orders.

In a patient's suit against a rehabilitation institute, where the institute was ordered to produce certain documents that it contended were privileged, certiorari was inappropriate because (1) the institute sought to reverse a discovery order, (2) the supreme court would be required to delve into the underlying merits of the controversy, and (3) the institute was asking the supreme court to interpret the statute at issue and determine whether the circuit court properly construed and applied it. *Baptist Health v. Circuit Court*, 373 Ark. 455, 284 S.W.3d 499 (2008).

16-46-106. Access to medical records.

(a)(1) In contemplation of, preparation for, or use in any legal proceeding, any person who is or has been a patient of a doctor, hospital, ambulance provider, medical health care provider, or other medical institution shall be entitled to obtain access, personally or by and through his or her attorney, to the information in his or her medical records, upon request and with written patient authorization, and shall be furnished copies of all medical records pertaining to his or her case upon the tender of the expense of such copy or copies.

(2) Cost of each photocopy, excluding X rays, shall not exceed fifty cents (.50¢) per page for the first twenty-five (25) pages and twenty-five cents (.25¢) for each additional page. A labor charge not exceeding fifteen dollars (\$15.00) may be added for each request for medical records under subdivision (a)(1) of this section, and the actual cost of any required postage may also be charged.

(3) Provided, however, in the alternative to the labor charge described in subdivision (a)(2) of this section, a reasonable retrieval fee for stored records of a hospital, a physician's office, or an ambulance provider may be added to the photocopy charges, only if the requested records are stored at a location other than the location of the hospital, physician's office, or ambulance provider.

(4) Provided, further, this section shall not prohibit reasonable fees for narrative medical reports or medical review when performed by the physician or medical institution subject to the request, but only if a narrative medical report or medical review is requested by the person or entity requesting the records.

(b)(1) If a doctor believes a patient should be denied access to his or her medical records for any reason, the doctor must provide the patient or the patient's guardian or attorney a written determination that disclosure of such information would be detrimental to the individual's health or well-being.

(2)(A) At such time, the patient or the patient's guardian or attorney may select another doctor in the same type practice as the doctor subject to the request to review such information and determine if disclosure of such information would be detrimental to the patient's health or well-being.

(B) If the second doctor determines, based upon professional judgment, that disclosure of such information would not be detrimental to the health or well-being of the individual, the medical records shall be released to the patient or the patient's guardian or attorney.

(3) If the determination is that disclosure of such information would be detrimental, then it either will not be released or the objectionable material will be obscured before release.

(4) The cost of this review of the patient's record will be borne by the patient or the patient's guardian or attorney.

(c) Nothing in this section shall preclude the existing subpoena process; however, if a patient is compelled to use the subpoena process

in order to obtain access to, or copies of, their own medical records after reasonable requests have been made and a reasonable time has expired, then the court issuing the subpoena and having jurisdiction over the proceedings shall grant the patient a reasonable attorney's fee plus costs of court against the doctor, hospital, or medical institution.

(d) This section does not apply to the Department of Correction.

History. Acts 1991, No. 767, §§ 1, 2; 1995, No. 708, § 1; 1999, No. 333, §§ 1, 2; 2007, No. 662, § 1.

CASE NOTES

Cited: Chartone, Inc. v. Raglon, 373 Ark. 275, 283 S.W.3d 576 (2008).

16-46-107. Identification of medical bills at trial.

CASE NOTES

Chiropractic Services.

Order finding plaintiff's medical expenses excessive in her personal injury action against defendant was upheld because plaintiff failed to provide expert testimony that her chiropractic treatment was medically necessary and reasonable;

the only evidence presented was plaintiff's own self-serving testimony and an invoice from her chiropractor. *Young v. Barbera*, 92 Ark. App. 70, 211 S.W.3d 29 (2005), rev'd, 366 Ark. 120, 233 S.W.3d 651 (2006).

16-46-108. Photographically reproduced records admissible in court.

CASE NOTES

ANALYSIS

Admissibility.
Notice.

Admissibility.

Finding in favor of the beneficiaries and against the intestate heirs in a will-contest action was proper where the beneficiaries satisfied the requirements of Ark. R. Evid. 803(6) and proved that the bank's records were admissible as an exception to the hearsay rule and, even though the officer was not the custodian of the records, that did not bar the admission; further, the records were adequately authenticated under Ark. R. Evid. 901 because the officer repeatedly testified that the copies were true and accurate copies of the records that they depicted. *Metzgar v. Rodgers*, 83 Ark. App. 354, 128 S.W.3d 5 (2003).

In an action to collect unpaid credit card debt, the trial court abused its discretion in excluding business records which reflected a credit card debt owed by the cardholder because the documents were supported by an affidavit that complied with subsection (b) of this section. The cardholder never claimed a lack of notice and made no objection to the admission of the business records. *Ozark Capital Corp. v. Pullen*, 2012 Ark. App. 652, — S.W.3d —, 2012 Ark. App. LEXIS 771 (Nov. 14, 2012).

Notice.

It is proper to exclude either the date of filing or the first day of trial when computing the 14-day statutory period pursuant to this section, but it is improper to exclude both dates from the computation. *Phelan v. Discover Bank*, 361 Ark. 138, 205 S.W.3d 145 (2005).

16-46-109. Proceedings, minutes, records, or reports confidential.

(a)(1) The proceedings, minutes, records, or reports of the quality assurance committees having the responsibility for reviewing and evaluating the quality of medical, nursing, or other care delivered in a long-term care facility, or of professional consultants engaged by long-term care facilities to study quality-of-care issues identified by the committee, and any other records, other than those records described in subsection (c) of this section, compiled or accumulated by the staff of a facility in connection with the review or evaluation, together with all communications or reports originating in the committee are:

(A) Exempt from discovery and disclosure to the same extent that proceedings, minutes, records, or reports of committees evaluating quality of medical or hospital care are exempt under § 16-46-105(a)(1);

(B) Not admissible in any legal proceeding; and

(C) Absolutely privileged communication.

(2) Testimony as to events occurring during the activities of the committee is:

(A) Exempt from discovery and disclosure to the same extent that testimony before committees evaluating quality of medical or hospital care are exempt under § 16-46-105(a)(2); and

(B) Not admissible as evidence in any legal proceeding.

(b) This section does not prevent disclosure of the data mentioned in subsection (a) of this section to an appropriate state or federal regulatory agency that by statute or regulation is entitled to access to the data.

(c)(1) This section does not apply to or affect the discovery or admissibility into evidence in a civil proceeding of the following records:

(A) Records or reports made in the regular course of business by a long-term care facility or other health care provider that are not created by or for the committee;

(B) Records or reports otherwise available from original sources, including without limitation the medical record of specific residents;

(C) Records or reports required to be kept by applicable law or regulation that are not created by or for the committee;

(D) Incident and accident reports;

(E) The long-term care facility's operating budgets; or

(F) Records of the committee's meeting dates.

(2) Without waiving any privilege, appointments to the committee are available to the Medicaid Fraud Control Unit of the Attorney General's office.

History. Acts 2009, No. 198, § 3.

SUBCHAPTER 2 — PUBLIC RECORDS AS EVIDENCE GENERALLY

SECTION.

16-46-201 — 16-46-203. [Repealed.]

16-46-205 — 16-46-210. [Repealed.]

SECTION.

16-46-212. [Repealed.]

16-46-201 — 16-46-203. [Repealed.]

Publisher's Notes. These sections, concerning statute books and official documents of cities and towns as evidence, were repealed by Acts 2013, No. 1148, §§ 9[10]–11[12]. The sections were derived from the following sources:

16-46-201. Rev. Stat., ch. 59, § 1; C. & M. Dig., § 4115; Pope's Dig., § 5124; A.S.A. 1947, § 28-901.

16-46-202. Rev. Stat., ch. 59, §§ 2, 3; C. & M. Dig., §§ 4116, 4117; Pope's Dig., §§ 5125, 5126; A.S.A. 1947, §§ 28-902, 28-903.

16-46-203. Rev. Stat., ch. 59, § 10; C. & M. Dig., § 4129; Pope's Dig., § 5138; A.S.A. 1947, § 28-904.

16-46-205 — 16-46-210. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning certain copies of documents as evidence, were repealed by Acts 2013, No. 1148, §§ 12[13]–17[18]. The sections were derived from the following sources:

16-46-205. Rev. Stat., ch. 18, § 6; Acts 1853, § 2, p. 199; Civil Code, § 487; C. & M. Dig., §§ 4122, 4123, 4128; Pope's Dig., §§ 5131, 5132, 5137; A.S.A. 1947, §§ 28-908 — 28-910.

16-46-206. Rev. Stat., ch. 59, §§ 11, 13; C. & M. Dig., §§ 4130, 4132; Pope's Dig.,

§§ 5139, 5141; A.S.A. 1947, §§ 28-912, 28-913.

16-46-207. Rev. Stat., ch. 59, § 12; C. & M. Dig., § 4131; Pope's Dig., § 5140; A.S.A. 1947, § 28-914.

16-46-208. Rev. Stat., ch. 59, § 14; C. & M. Dig., § 4133; Pope's Dig., § 5142; A.S.A. 1947, § 28-915.

16-46-209. Rev. Stat., ch. 59, § 6; C. & M. Dig., § 4120; Pope's Dig., § 5129; A.S.A. 1947, § 28-916.

16-46-210. Acts 1853, § 24, p. 161; C. & M. Dig., § 4127; Pope's Dig., § 5136; A.S.A. 1947, § 28-917.

16-46-212. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning authenticated copies or tran-

scripts of federal documents, was repealed by Acts 2013, No. 1148, § 18[19]. The section was derived from Acts 1949, No. 293, § 4; A.S.A. 1947, § 28-931.

SUBCHAPTER 3 — HOSPITAL RECORDS ACT

SECTION.

16-46-301. Definitions.

16-46-302. Furnishing copies of records in compliance with subpoenas.

SECTION.

16-46-305. Affidavit of custodian as to copies — Charges.

16-46-308. Substitution of copies for original records.

16-46-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Custodian" means the medical records librarian and the administrator or other chief officer of a duly licensed hospital, physician's office, or comprehensive community mental health center in this state and its proprietor, as well as his or her deputies and assistants, and any other persons who are official custodians or depositories of records; and

(2)(A) "Records" means hospital records, physician's records, or medical records and includes an admitting form, discharge summary, history and physical, progress notes, physicians' orders, reports of operations, recovery room records, lab reports, consultation reports, medication records, nurses' notes, and other reports catalogued and maintained by the hospital's medical record department or by a physician's office.

(B) However, "records" shall not mean and include X rays, electrocardiograms, and similar graphic matter.

History. Acts 1981, No. 255, § 1; A.S.A. 1947, § 28-936; Acts 1993, No. 274, § 1; 2007, No. 662, § 2.

16-46-302. Furnishing copies of records in compliance with subpoenas.

Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any hospital or physician's office duly licensed under the laws of this state in an action or proceeding in which the hospital or physician's office is neither a party nor the place where any cause of action is alleged to have arisen and such a subpoena requires the production of all or any part of the records of the hospital or physician's office related to the care or treatment of a patient in the hospital or physician's office, then it shall be sufficient compliance therewith if the custodian delivers, by hand or by registered mail to the court clerk or the officer, court reporter, body, or tribunal issuing the subpoena or conducting the hearing, a true and correct copy of all records described in the subpoena together with the affidavit described in § 16-46-305. However, a subpoena duces tecum for records shall not be deemed to include X rays, electrocardiograms, and similar graphic matter unless they are specifically referred to in the subpoena.

History. Acts 1981, No. 255, § 2; A.S.A. 1947, § 28-937; Acts 2007, No. 662, § 3.

16-46-305. Affidavit of custodian as to copies — Charges.

(a) The records shall be accompanied by an affidavit of a custodian stating in substance:

(1) That the affiant is the duly authorized custodian of the records and has authority to certify the records;

(2) That the copy is a true copy of all the records described in the subpoena; and

(3) That the records were prepared by personnel of the hospital, staff physicians, or persons acting under the control of either, or the physician, personnel of the physician's office, or persons acting under control of the physician, in the ordinary course of the hospital's or physician's office business at or near the time of the act, condition, or event reported therein.

(b) If the hospital or physician's office has none of the records described, or only part of them, the custodian shall state so in the affidavit and file the affidavit and any records as are available in the manner described in §§ 16-46-302 and 16-46-303.

(c) The custodian of the records may enclose a statement of costs for copying the records, and the costs of copying the records shall be borne by the party requesting the subpoena duces tecum for the records.

History. Acts 1981, No. 255, § 5; A.S.A. 1947, § 28-940; Acts 2007, No. 662, § 4.

16-46-308. Substitution of copies for original records.

In view of the property right of the hospital or physician's office in its records, original records may be withdrawn after introduction into evidence and copies substituted unless otherwise directed by the court, judge, officer, body, or tribunal conducting the hearing. The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making the copies shall be borne by the party requesting the subpoena. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making the copies shall be borne by the party requesting the subpoena.

History. Acts 1981, No. 255, § 8; A.S.A. 1947, § 28-943; Acts 2007, No. 662, § 5.

SUBCHAPTER 4 — PATIENT MEDICAL RECORDS PRIVACY ACT

SECTION.

16-46-401. Title.

16-46-402. Definitions.

16-46-403. Notice required.

SECTION.

16-46-404. Use of medical records at trial.

16-46-405. Scope of subchapter.

16-46-401. Title.

This subchapter shall be known and may be cited as the "Patient Medical Records Privacy Act".

History. Acts 2005, No. 1436, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Practice, Procedure, and Courts, Legislation, 2005 Arkansas General As- 28 U. Ark. Little Rock L. Rev. 377.

16-46-402. Definitions.

As used in this subchapter:

(1)(A) "Medical records" means hospital or clinic records, physicians' records, or other health care records and includes an admitting form, discharge summary, history and physical, progress notes, physicians' orders, reports of operations, recovery room records, lab reports, consultation reports, medication records, nurses' notes, and other reports catalogued and maintained by the medical records department of a hospital, doctor's office, medical clinic, or any other medical facility.

(B) "Medical records" includes X rays, computed tomography imaging, magnetic resonance imaging, electrocardiograms, radiographic studies, and other testing that generates a printed result; and

(2) "Party in litigation" means any person who requests copies of a patient's medical records from any doctor, hospital, or other custodian of records for use in any civil legal proceeding.

History. Acts 2005, No. 1436, § 1.

16-46-403. Notice required.

(a) Any party in litigation that receives or obtains a copy of a patient's medical records from a doctor, hospital, or other custodian of records by using a subpoena, court order, or consent form signed by the patient shall provide written notice of the receipt of the records to the:

(1) Patient; or

(2) Patient's attorney if the patient is represented by an attorney.

(b) The notice required by subsection (a) of this section may be made by:

(1) Any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee; or

(2) Facsimile with a receipt or transaction report showing that the transmittal was received.

(c) The notice required by subsection (a) of this section shall include the name and address of the provider for each record that was obtained.

History. Acts 2005, No. 1436, § 1.

16-46-404. Use of medical records at trial.

If notice is not given as required by § 16-46-403, a party in litigation shall be prohibited from introducing the patient's medical records into

evidence or referring to the patient's medical records in any manner in a legal proceeding relating to the patient.

History. Acts 2005, No. 1436, § 1.

16-46-405. Scope of subchapter.

(a) This subchapter shall apply to private litigants in civil actions only and shall not alter the rights, duties, or responsibilities of any person or entity in any other type of legal proceeding, including, but not limited to, actions under the Workers' Compensation Law, § 11-9-101 et seq.

(b) All provisions of this subchapter shall be subject to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) Upon adoption of a Supreme Court rule which is substantially similar to the provisions of this subchapter, this subchapter shall be deemed superseded.

History. Acts 2005, No. 1436, § 1.

U.S. Code. The Health Insurance Portability and Accountability Act of 1996,

Pub. L. No. 104-191, 110, Stat. 1936, referred to in (b), is codified throughout Titles 18, 26, 29 and 42 of the U.S. Code.

CHAPTER 47

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. UNIFORM ACKNOWLEDGMENT ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

16-47-107. Forms for acknowledgment.

Effective Dates. Acts 2013, No. 999, § 6: Apr. 8, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many instruments affecting title to real estate are being found to not provide constructive notice because of defects in the certificates of acknowledgment; and that this act is immediately necessary to protect property rights and interests. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Notes. Atkinson, Laurence, *The Avoidance by an Arkansas Bankruptcy Trustee of a Mortgage Defectively Acknowledged*, 2003 Arkansas L. Notes 1.

16-47-101. Proof or acknowledgment as prerequisite to recording real estate conveyances.

CASE NOTES

ANALYSIS

Defective Acknowledgment.
Failure to Acknowledge.
—Constructive Notice.
Lis Pendens.

Defective Acknowledgment.

Where a mortgage lien was defective because the mortgage deed failed to comply with the acknowledgement requirements in § 16-47-106 and this section, a creditor was not entitled to reformation of the contract because the trustee had the same rights as a bona fide purchaser under 11 U.S.C.S. § 544(a)(3), and those rights would be prejudiced by the imposition of an equitable lien. *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Failure to Acknowledge.

Curative statute, § 18-12-208, did not operate to cure a mortgage deed that failed to comply with the acknowledgement requirements in this section and § 16-47-101 because the transaction occurred after the passage of the statute. Thus, a mortgage lien was not perfected and could be avoided by a trustee under 11 U.S.C.S. §§ 544(a) and 550(a). *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Recorded affidavit of lost mortgage, with a copy of the mortgage appended, was not constructive notice to a bankruptcy trustee of the mortgagee's interest in the subject property because the affidavit was not an "instrument of writing affecting title," under § 14-15-404(a)(1), as (1) the affidavit did not affect title, since the affidavit's purpose was to give notice that there was a mortgage executed which was lost, and (2) an instrument

affecting real estate had to be acknowledged before being admitted to record, under this section, but the grantor did not acknowledge the affidavit, nor was the grantor required to, as the affidavit was witnessed and notarized only for the purpose of attesting to the signature of the lender's employee who stated the mortgage was lost and the bank claimed an interest in the property, so the trustee, as a bona fide purchaser for value, under 11 U.S.C.S. § 544, could avoid the mortgagee's lien. *Wetzel v. Mortgage Elec. Registration Sys.*, 2010 Ark. 242, — S.W.3d — (2010).

—Constructive Notice.

Mortgage lien was not perfected and could be avoided by a trustee under 11 U.S.C.S. §§ 544(a) and 550(a), who was also entitled to an award of reasonable attorney fees, because an acknowledgment that did not comply with § 16-47-106 and this section did not provide constructive notice. The omission of the debtor's name alone would not have been fatal, as the omitted information could have been filled in by reference to the document as a whole; however, omission of the name plus the use of a different gender led to an ambiguity that would have required extrinsic evidence. *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Lis Pendens.

As a lis pendens is not an instrument in writing for the conveyance of any real estate or by which any real estate may be affected in law or equity, acknowledgment of the lis pendens is not required under this section. *Benefit Bank v. Rogers*, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

16-47-106. Manner of making acknowledgment — Proof of deed or instrument — Proof of identity of grantor or witness.

CASE NOTES

ANALYSIS

Proof of Acknowledgment.
Sufficiency of Acknowledgment.
Validity of Instruments.

Proof of Acknowledgment.

Where a mortgage lien was defective because the mortgage deed failed to comply with the acknowledgement requirements in this section and § 16-47-101, a creditor was not entitled to reformation of the contract because the trustee had the same rights as a bona fide purchaser under 11 U.S.C.S. § 544(a)(3), and those rights would be prejudiced by the imposition of an equitable lien. *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Under §§ 21-14-111, 16-47-205, and 28-68-304(a)(3)(A), the decedent’s attorney’s secretary signed the certificate of acknowledgement for the November 20 power of attorney before the decedent signed the instrument, and this improper notarization of the acknowledgement was fatal to the validity of the November 20 power of attorney. *Jones v. Owen*, 2009 Ark. 505, 342 S.W.3d 265 (2009).

Sufficiency of Acknowledgment.

Mortgage lien was not perfected and could be avoided by a trustee under 11

U.S.C.S. §§ 544(a) and 550(a), who was also entitled to an award of reasonable attorney fees, because an acknowledgement that did not comply with this section and § 16-47-101 did not provide constructive notice. The omission of the debtor’s name alone would not have been fatal, as the omitted information could have been filled in by reference to the document as a whole; however, omission of the name plus the use of a different gender led to an ambiguity that would have required extrinsic evidence. *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Validity of Instruments.

Curative statute, § 18-12-208, did not operate to cure a mortgage deed that failed to comply with the acknowledgement requirements in this section and § 16-47-101 because the transaction occurred after the passage of the statute. Thus, a mortgage lien was not perfected and could be avoided by a trustee under 11 U.S.C.S. §§ 544(a) and 550(a). *Williams v. JPMorgan Chase Bank, N.A. (In re Stewart)*, 422 B.R. 185 (Bankr. W.D. Ark. 2009).

16-47-107. Forms for acknowledgment.

(a) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by corporations, business trusts, estates, partnerships, limited liability companies, associations, joint ventures, or any other legal entities, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of
County of

On this day of, 20..., before me,, a Notary Public, (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), duly commissioned, qualified and acting, within and for said County and State,

appeared in person the within named and, (being the person or persons authorized by said corporation, [business trust, estate, partnership, limited liability company, association, joint venture, or other legal entity] to execute such instrument, stating their respective capacities in that behalf), to me personally well known (or satisfactorily proven to be such person), who stated that [he, she, or they] was [were] the [and] of the, a corporation [business trust, estate, partnership, limited liability company, association, joint venture, or other legal entity], and was [were] duly authorized in [his, her, or their] respective capacity [capacities] to execute the foregoing instrument(s) for and in the name and behalf of said corporation [business trust, estate, partnership, limited liability company, association, joint venture or other legal entity], and further stated and acknowledged that [he, she, or they] had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

“IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of, 20

.....
(Notary Public)”

(b) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by individuals, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of
County of

On this day of, 20...., before me,, a Notary Public, (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), appeared the within named [and], to me personally well known (or satisfactorily proven to be such person), who stated and acknowledged that [he, she, or they] had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

“IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of, 20

.....
(Notary Public)”

(c) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by attorneys in fact, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of
County of

On this theday of, 20....., before me,, the undersigned officer, personally appeared, known to me (or satisfactorily proven) to be the person whose name is subscribed as attorney in fact for, and acknowledged that he executed the same as the act of his principal for the consideration, uses, and purposes therein contained.

IN TESTIMONY WHEREOF I hereunto set my hand and official seal.

.....
.....
Title of Officer.”

(d) All deeds or instruments affecting or purporting to affect the title to land executed in the above and foregoing form listed in subsections (a), (b), or (c) of this section as applicable, shall be good and sufficient.

(e) The bracketed language listed in subsections (a), (b), and (c) above, suggests alternate language and is not required to be in an acknowledgment when the alternate language is not applicable.

(f) The use of the present or past tense in the form of acknowledgment shall not affect the validity of the acknowledgment.

(g) The heading of the acknowledgment may list either:

- (1) The county where the officer executing the acknowledgment resides; or
- (2) The county where the acknowledgment occurred.

History. Acts 1919, No. 45, § 1; C. & M. Dig., § 1526; Pope’s Dig., § 1836; A.S.A. 1947, § 49-212; Acts 2013, No. 999, § 1[3].
A.C.R.C. Notes. Acts 2013, No. 999, contained two sections designated as “SECTION 1”.
Amendments. The 2013 amendment substituted “Forms for acknowledgment” for “Acknowledgment by corporations” in the section heading; in (a), substituted

“corporations, business trusts, estates, partnerships, limited liability companies, associations, joint ventures, or any other legal entities, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202” for “corporations, the form of acknowledgment shall be as follows” and updated the form; and added (b), (c), (e), (f), and (g) and redesignated former (b) as (d).

SUBCHAPTER 2 — UNIFORM ACKNOWLEDGMENT ACT

SECTION.
16-47-207. [Repealed.]

Effective Dates. Acts 2013, No. 999, § 6: Apr. 8, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many instruments affecting title to real estate are being found to not provide constructive notice because of defects in the certificates of acknowledgment; and that this act is immediately necessary to

protect property rights and interests. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or

and the veto is overridden, the date the

(3) If the bill is vetoed by the Governor

last house overrides the veto.”

16-47-201. Acknowledgment of instruments.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

16-47-205. Proof of identity of person making.

CASE NOTES

Improper Notarization.

Under §§ 21-14-111, 28-68-304(a)(3)(A), and this section, the decedent’s attorney’s secretary signed the certificate of acknowledgement for the November 20 power of attorney before the decedent

signed the instrument, and this improper notarization of the acknowledgement was fatal to the validity of the November 20 power of attorney. *Jones v. Owen*, 2009 Ark. 505, 342 S.W.3d 265 (2009).

16-47-207. [Repealed.]

Publisher’s Notes. This section, concerning forms of certificates, was repealed by Acts 2013, No. 999, § 2. The section

was derived from Acts 1943, No. 169, § 7; A.S.A. 1947, § 49-107.

